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Supreme Court, U.S.
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No. ____________

In The
SUPREME COURT OF THE UNITED STATES

**HARMON LUTHER TAYLOR,**
Defendant-Appellant-Petitioner-Petitioner,

v.

**STATE OF TEXAS,**
Plaintiff-Appellee-Respondent-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
OF TEXAS,
TO THE TENTH COURT OF APPEALS,
AND TO THE COUNTY COURT AT LAW
OF WALKER COUNTY

# ORIGINAL PETITION FOR A WRIT OF CERTIORARI

## WITH APPENDICES A, B, C, AND D

HARMON LUTHER TAYLOR
C/O 7014 MASON DELLS DRIVE
DALLAS, TX 75230

## Questions Presented

### Collateral Order Doctrine Study

1. Is the collateral order doctrine part of Due Process applicable to the states via the 14th Amendment?

2. Does the trial court have jurisdiction during the pendency of a collateral order doctrine appeal?

Statutory Challenge

3. Does CIV. PRAC. & REM. CODE § 51.014 violate Due Process?

Specific Issues

4. What's the big deal with the "no driver's license" ticket?

5. May the county court compel Taylor to trial without first delivering the transcript of that 28 November hearing?

6. Where a deputy clerk with the municipal court is the complainant, is that clerk's office too "interested" to qualify as an agent for service?

7. Where a deputy clerk is the complainant, is the municipal court a witness/party, thereby triggering ***disqualification***?

8. Where a deputy clerk is the complainant, can that deputy remain a "custodian of records?"

## Issues included for jurisdictional purposes

**9.** Does TX TRANS. CODE § 521.021 define a crime?

**10.** Does the complaint charge a crime?

**11.** Where's the commercial nexus?

**12.** What does "operate" mean?

**13.** What does "this state" mean?

**14.** Does Art. 45.018(b) violate Due Process?

**15.** Is an arraignment a "proceeding" for purposes of Art. 45.018(b)?

## New Issues—Questions to Certify

**16.** Since the petition for discretionary review doubles as a motion to reconsider, *see* TEX. R. APP. P. 50, is that compelled motion considered denied by operation of law when the petition is filed in Austin? (This affects plenary jurisdiction.) And, does TEX. R. APP. P. 49.4 violate Due Process?

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## Petition for a Writ of Certiorari

Taylor petitions for a writ of certiorari to all of the Court of Criminal Appeals (CCA), the state appellate court, and the county trial/appellate court as follows:

### Citations to decisions below

*Taylor v. State*, 268 S.W.3d 752 (Tex. App.—Waco 2008, *pet. ref'd*).

### Jurisdiction

(i) Date Discretionary Review Denied
26 November 2008 [+90: 24 Feb 2009].
**Additional dates:** 2009 Jan 26—Mandate;
[Same]—Warrant issued, Bond increased;
Feb 10—2d contempt motion denied. *See* App. B.

(ii) Extension ?? *See* Question 2, p.19.

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1257(a) (final), 2101**(c)**.

(v) Regarding Rule 29.4(c)
STATE is a party. All activity in STATE's courts.

### Oral Argument Calendar Available

Regardless of which way the chips may fall, if this case is a useful national teaching tool, oral argument is certainly available.

## Statement of the Case

### When Federal Questions Were Raised

The instant a "no driver's license" ticket was issued to a traveler.

**2007** Jan 24. While traveling back to Dallas after a brief visit with his sister's family in Lake Jackson, Texas, [1] Taylor was stopped by two very professional and courteous police officers employed by City of Huntsville, Texas. Since Taylor is not in the transportation business, i.e., not a "driver" or an "operator," under any choice of law, Taylor has no "driver's license." As they stood in the light drizzle at the side of the highway, where passing traffic was sometimes deafening, the two officers patiently listened to Taylor's explanation of "this state" and the commercial nature of "driving." Having been misled into thinking that "licensing" has something to do with the size of the engine in the car, rather than the nature of the use of the car, and *that* within a particular choice of law, one of the officers issued Taylor a ticket for "no driver's license." That ticket, drawn up by the officer, correctly left blank the check box next to "Commercial Vehicle."

**THE THREE FEDERAL QUESTIONS THAT HAVE PREDOMINATED FROM THAT MOMENT TO THIS.**

(1) May STATE compel Taylor into the transportation business?

(2) May STATE compel Taylor into any particular choice of law?

And, given that the "license" has a ***much*** more common, and insidious, "secondary" use/purpose as an "ID card," here's the third question: (3) May

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[1] The seasonal sale on the space rug did not include delivery.

STATE compel Taylor into political/religious affiliation with "church of STATE OF TEXAS?"

Compulsion, here, of course, is by way of STATE's criminal prosecution authority.

**THERE ARE MORE TO BE ADDRESSED.**

Those are the key federal questions sounding in defense. Very closely related is one more of several questions sounding in a claim: Does prosecution of a "no driver's license" charge against a traveler constitute a conspiracy to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same? *See* 18 U.S.C. § 241. *See also* § 242.

When STATE failed to serve Notice timely.

[2007 Jan 24: Ticket.]

Jan. 31. Taylor filed his motion to dismiss, which focused on the lack of Notice. Art. 45.018(b).

Feb. 19. Hearing set for April 5.

Apr. 5. Two months after Taylor filed his motion:

(A) Motion to dismiss denied (1st proceeding).

(B) *First* arraignment. Court entered plea of Not Guilty for Taylor. Taylor declined to plea, given the complete absence of Notice. (**2d** proceeding).

(C) Trial set for May 17.

(D) Court engaged its *sua sponte* mandamus "display." *See* App. D (detailing additional federal questions). (**3d** proceeding).

(E) ***THEN***, the deputy clerk hand-delivered the complaint to Taylor, which is too late. *See* Art. 45.018(b); *Rothgery* ("arraignment" is a proceeding).

### When STATE failed to serve Notice sufficiently.

Apr. 5. The deputy clerk who delivered the complaint is also the complainant. Since a complainant has an interest in the case, a complainant cannot serve process.

### When municipal judge became the complainant.

Apr. 5. The complainant is a deputy clerk with the municipal court. She has no personal knowledge of the case. Her knowledge of the case comes solely as a by-product of her employment with the court.

Applying agency the first time, the deputy clerk acts for and on behalf of the clerk. Applying agency again, the clerk acts for the court. Thus, where the deputy clerk crosses the Separation of Powers line and becomes a (hearsay) witness for STATE, i.e., the complainant, solely by virtue of her employment, the judge is the *de facto* (hearsay) witness for STATE.

Where a judge is a witness, a judge is a witness. That's not the problem. The problem is ***disqualification***, which happens where a judge is both a witness and a judge in the same case.

### When the custodian of Records became a witness for STATE.

Apr. 5. What happens where the complainant is a deputy clerk? (1) The judge becomes the *de facto* complainant. (2) A custodian of Records is now also STATE's witness.

Even where the clerk *does* have personal knowledge, but all the more especially where s/he has ***no*** personal knowledge and becomes STATE's witness solely by virtue of employment, an egregious conflict arises that defies Separation of Powers.

When the municipal judge refused to memorialize his orders.

Apr. 5. The municipal judge issued various orders in open court, but there is no court reporter. So, to document what had transpired, Taylor inquired about getting draft orders to the court for signature. "You can send 'um, but I'll decide whether I want to sign 'um."

After some additional discussion, this transpired:

Taylor: And, I need for you to enter written orders.

GAINES: What orders?

Taylor: All the orders you've issued this morning! Contempt. Mandamus. Silence.

GAINES: (After a reflective pause) Well, you can send draft orders, but I may or may not ever sign 'um.

When the municipal judge refused to seat a lawful Venire.

May 17. Despite Taylor's demand for a Venire of 12, drawn from the vicinage, the municipal judge seated a six-member administrative advisory panel. [2]

*Second* "arraignment" occurred immediately prior to STATE's case-in-chief. Q: "How do you plea?" Taylor declined for the ***second*** time to enter a plea given the complete absence of Notice. A: "To what?"

Early into deliberations, the panel asked about "jury nullification." The municipal judge correctly informed them that such doesn't exist in this state.

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[2] Panel members are (1) members of STATE OF TEXAS (***all*** are drawn from DL lists) and (2) bound by oath to the judge, not to the law, but to the law given by the judge. So, how can STATE even pretend to extend, grant, or apply immunity beyond its own or the judge's? *Members* may have limited claims, but what about *non-members*?

When the municipal judge entered a judgment.
May 17. Verdict of Guilty; fine, $100; costs, $65.
May 21. Bond for $330.

When the county judge refused to dismiss.

Aug. 10. Original "order," Notice for ***third*** arraignment of Oct. 17, signed by non-judicial officer.

Aug. 31. Taylor filed his motions, which were designed for ruling without need for a hearing.

Sep. 21. The court's sole response regarding the motions was ***one more*** of the incessant threats of jail for non-appearance. [3] STATE commits all the crimes, and then turns right around and threatens the victim with jail at ***every*** turn. That got several people sued. Taylor v. Hale, et al., Case No. 3:07-CV-1634-L (N.D. Tex. Dal.). [4]

Oct. 17. This original setting was used to try to sucker Taylor into signing the pre-printed reset form, [Tr. Ex. D-111] (Vol. 2, next to last page), which would overtly waive Notice, which is a key issue in this case. Taylor drove six hours (round trip) and waited for however long for his case to be called for a 2-minute exchange involving signing that reset form, designed to trick Taylor into waiving his objection to Notice. [Tr. Ex. D-111] (Vol. 2, next to last page).

**2007 Nov. 28. Hearing on Taylor's motions. All motions denied viva voce in open court.**

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[3] Huntsville is Texas' law-enforcement mecca. Culturally, (A) to be given a ticket is to be guilty, by definition; (B) pleading anything but guilty is evidence of being out of one's mind.

[4] The trial court, rightfully concerned about Notice, dismissed this case, despite clerk's failure to serve his "show cause" order.

When the court reporter refused to produce the transcript.

Nov. 28. Verbally, Taylor requested the Transcript immediately after that hearing.

Same song; second verse. The county judge has refused to memorialize her orders. [5] So, in order for Taylor to have the orders in writing, Taylor had to get the Transcript he had already requested, regarding which he had received a promise of an estimate but which estimate hadn't materialized for six months. The Transcript is not only the only source of the order(s) but also a witness' statement. Without it, Taylor is denied access to the appellate courts as well as denied discovery in the trial court.

It took this appeal and a total of eight and a half months to get that 20-page transcript. [6]

When the county court issued the *de facto* pre-trial sentence of "probation for life with a bi-monthly check-in."

**Into 2008**. Case reset ***multiple*** times. *Oct. 17* – *reset* (in person) for Nov. 28 (call) / Dec. 17 (trial); [Nov. 28 – hearing on Taylor's motions]; *Dec. 14* – *reset* (by phone call and email) for Feb. 6 (call) / Feb. 19 (trial); *Feb. 6* – *reset* (in person) for Apr. 16 (call) / Apr. 28 (trial) (Taylor was 3d or 4th on the Docket); *Apr. 28* – Taylor's special setting request denied – *reset* (in person) for Jun. 11 (call) / Jun. 23 (trial).

**2008 Apr. 28**. At least one trial was to precede Taylor's. Options: (1) stay overnight; (2) drive back to Dallas and then back to Huntsville the next day;

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[5] *Cf.* TX R. APP. P. 26.1 (signature), 26.2 (open court).

[6] That *includes* the certification page. The Exhibit volume, photocopies of Taylor's 11 Exhibits, is just over 100 pages.

(3) get a reset. Taylor didn't request just a reset; he requested a special setting. But the Jun. 11/23 setting was just another generic setting; hence, special set request denied, which formally and unequivocally confirmed the pre-trial sentence of "probation for life with a bi-monthly check-in."

Jun. 3. Collateral order doctrine appeal filed.

Jun. 20. Notice of Appeal hand-delivered to Waco.

When the appellate court vexatiously delayed forwarding Taylor's petition for discretionary review.

Jul. 3. "Show cause" order regarding jurisdiction.

Jul. 7. Taylor's response.

[Extension requests by Reporter, Clerk. Granted.]

Aug. 7. Clerk's Record filed.

Aug. 13. Reporter's Record filed (***requested*** Nov. 28, 2007, i.e., eight and a half months prior).

Aug. 22. Taylor's Brief filed.

Sep. 3. Appellate opinion filed. [7]

Sep. 5. Taylor filed and served his petition for discretionary review (PDR). Since by operation of law the petition doubles as a motion to reconsider, *see* TX R. APP. P. 50, it is filed with the *appellate* court rather than directly with the *high* court. TX R. APP. P. 68.3. The appellate court had 30 days to reconsider, but they came close to exhausting the entire "new" time period of 60 days. They had no intention of reconsidering anything. They stalled deliberately, intending to aid and abet the trial court's exercise of jurisdiction that didn't exist.

Oct. 8. Taylor raised one hellacious objection to that delay. (This appeal predates the Rule changes.)

Oct. 24. CCA filed Taylor's PDR.

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[7] STATE's Brief not due yet, but STATE never objected. Facts are unrebutted, including the concept of ***pre-trial sentencing***.

When the county court acted in contempt of the appellate court's jurisdiction.

Sep. 9. The county court unilaterally reset the trial date to *Oct. 29* (call) / 17 Nov. (trial).

?? Without Notice to Taylor, the county court removed this case from its Docket.

Sep. 11. Taylor filed his motion for contempt with both the appellate court and the CCA.

Sep. 23. Appellate court denied the motion.

Oct. 28. CCA denied the motion.

Petition-adjusting and perspective-enhancing recent events.

App. C has taken quite a while to compile. The silver lining is the opportunity to address these very recent additional federal-question-raising events.

### WHEN HALE FLAGRANTLY BREACHED HER AGREEMENT WITH TAYLOR.

Oct. 29. As documented in Taylor's Status Report of Oct. 30, filed with the CCA with copies to the lower courts, Hale, in open court, before a full courtroom, expressed surprise to see Taylor in court on Oct. 29.

Hale, in open court, to Taylor, "I hadn't expected to see you here this morning." She didn't even call the case; thus, without Notice to Taylor, the case had simply been taken off the Docket.

As a result, the county court reset the case, again. But, the Jan. 26 setting was a temporary setting made solely because that was the latest date that even existed in the calendar at that time. [8] The understanding was that the case would simply be reset automatically for the duration of the appeal.

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[8] The Mayan calendar ends 2012 Dec. 21. In this exact same way, as of Oct. 29, the court's calendar ended 2009 Jan. 31.

Nov. 26. CCA refused Taylor's petition. That started the 90-day period to file this very petition, which period ends Feb. 24, unless extended another 60 days to Mon., Apr. 27.

**2009** Jan. 26. On or about this date, in hideous and flagrant breach of her agreement with Taylor, Hale issued or authorized the issuance of a warrant for Taylor's arrest due to alleged non-appearance on this date. This was not a special setting, given the temporary, stop-gap nature of its existence in the first place, and given the "probation for life with a bi-monthly check-in" pre-trial sentence, chances are very high that he case would have been reset, ***again***, with or without the agreement.

Per that same Oct. 29 setting, Docket Call was Jan. 7. Taylor wasn't there, but nothing was said about that. No other setting or ruling was made in the interim regarding Taylor's pending motions, [9] and nothing but silence exists regarding Taylor's pre-trial habeas also filed Sep. 30, i.e., ***four months*** prior. Looking back, given the filing of the Notice of Appeal, Taylor wasn't in Huntsville for the June 11 or 23 settings, either. The court unilaterally reset the case Sep. 9, then withdrew it without Notice; hence at the Oct. 29 setting Hale said, "I hadn't expected to see you here this morning," a statement fully supported by her not even calling the case. So, in egregious and manifest change of position, Hale has blind-sided Taylor by issuing an arrest warrant having induced his absence by agreement made in open court before a courtroom full of people.

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[9] Sep. 30. "Verified Motion to Show Authority," per TX R. CIV. P. 12, and "First Motion for Production of Documents and Things," per TX RS. CIV. P. 190-215, in particular 196.

### WHEN THE APPELLATE COURT ISSUED ITS MANDATE.

Jan 26. The state appellate court issued a Mandate. **What is the intent of *this* Mandate?**

What may be appealed? "A judgment or other appealable order." TX R. APP. P. 4(a)(1).

Why *does* a Mandate issue? Here, two possibilities exist. (1) To ***restore*** authority to the trial court after appeal of a "final" ruling. TX R. APP. P. 25.2(g). (2) To have the appellate judgment on an accelerated appeal "take effect." TX R. APP. P. 18.6.

If a trial court and an appellate court have simultaneous jurisdiction over an interlocutory matter, no trial court jurisdiction is lost. So, the Mandate would ***restore*** nothing. It would mark the date on which the appellate judgment takes effect. However, if the relevant rulings appealed are "final," then the Mandate serves to ***restore*** trial jurisdiction.

Which of the two intents prevails? *See, infra.*

### WHEN THE APPELLATE COURT REFUSED TO PROTECT ITS JURISDICTION.

Feb. 3. Upon learning of the existence of a warrant for his arrest, Taylor filed his second motion for contempt. Thus, the intent of ***this*** Mandate takes on all the more significance. (A) Where the Mandate ***restores*** trial jurisdiction, contempt is avoided "only" where the trial court's authority to act during the appeal derives from R. 27. (B) Where the Mandate gives the dismissal judgment "effect," then there's no exclusive appellate jurisdiction to protect. Thus, the trial court's flagrant breach of her agreement with Taylor wouldn't *also* sound in contempt. So, which of the two intents prevails? *See, infra.*

Feb. 10. Second motion for contempt denied for want of *jurisdiction to enforce the appellate judgment.*

Since enforcing an appellate judgment and protecting appellate jurisdiction are two different things, the ruling is all the more clear. In short, we now have a high degree of certainty regarding the intent of ***this*** Mandate.

***Restoration*** is ***strongly*** suggested. To take the appellate court's statement at face value (for who can tell them what their intent was or is? no one; they tell ***us***), key are two concepts: (A) enforcing the appellate judgment; and (2) the Nov. 3 date.

Initially, to address the math, to say that plenary jurisdiction expired Nov. 3 is to say that the adding machine needed new batteries. As a matter of law, ***all*** PDRs have a procedurally, even jurisdictionally, ***compelled*** "second" purpose as a "motion to reconsider." TX R. APP. P. 50. That motion must be considered denied by operation of law upon the filing of the PDR in Austin, i.e., Oct. 24. [10] Thus, presuming 60 days as the duration, plenary jurisdiction to *enforce the judgment* didn't end Nov. 3, but rather not before Dec. 23.

This is an issue of extreme importance. Not recognizing the ***compelled*** dual purpose of the PDR, which purpose is ***jurisdictional***, adversely affects every single case filed in Austin.

But, even more significantly, this "judgment enforcing"/Nov. 3 perspective confirms the intent of *this* Mandate. The appellate court intends that its judgment "take effect" Sep. 3, i.e., ***when entered!***

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[10] Here, there is no other explanation for the appellate court's delay beyond the 30-day mark, i.e., on or about Oct. 8.

**That means, in turn, that the purpose of *this* Mandate is to *restore* trial jurisdiction.**

Thus, as regards when federal questions were raised, this conclusion tells us ***five more*** things:

**(1)** the trial order(s) appealed is(are) "final;" thus

**(2)** appellate jurisdiction was exclusive, and

**(3)** the appellate court's original dismissal for want of jurisdiction would likely be self-adjusted if plenary jurisdiction had existed;

**(4)** the trial court's jurisdiction terminated June 3, when Taylor filed his Notice of Appeal; meaning

**(5)** unless R. 27 applies, the trial court has acted in defiance of the exclusive appellate jurisdiction, rendering all "orders" entered between June 3 and Jan. 26 facially void, including the one of Oct. 29 which purported to enter the Jan. 26 trial setting.

## Argument

## Collateral Order Doctrine Study

### 1. Is the collateral order doctrine part of Due Process applicable to the states via the 14th Amendment?

We're not really talking about *procedure.*

Question 1 is phrased largely per the nomenclature used in *The Permian Corp.*, among other opinions. Reflection suggests that the nomenclature is misleading. While Taylor expects Question 1 more than sufficiently raises the pertinent issues, it's clear upon reflection that we're not really talking ***procedure*** in the slightest. We're talking ***jurisdiction***, appellate jurisdiction.

What's the lesson in *Johnson v. Fankell*? The defendants don't have a *federal* right to a state court review of the denial of immunity. Idaho state appellate courts apparently didn't have ***jurisdiction*** to entertain the immunity defense issue before trial. Moreover, this Court has no way to change that. [11] If the matter were ***procedural***, the change would be self-apparent: call it Due Process, and apply the 14th. So, it's clear now that Question 1, as phrased, answers itself instantly and in the negative.

Why discuss this further? To address the questions necessarily included.

The threshold *jurisdictional* question.

Here's the threshold question for the collateral order doctrine: "What does 'final' mean?"

For purposes of *federal* appellate jurisdiction, via § 1291, "final" *includes* that which qualifies under the collateral order doctrine. *Cohen*. Thus, per § 1254, this Court may review judgments entered per § 1291 jurisdiction.

But, there's no way *Ritchie*, for example, may be analyzed per § 1291, because that's not a § 125*4* case. *Ritchie* is a § 125*7* case. Therefore, the *procedure*-based collateral order doctrine just ***had*** to apply to all states, right?! The result of the first pass study of that apparent inconsistency is App. C, which needs to be expanded a little bit to compare/contrast the jurisdictional provisions with the procedural ones. [12]

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[11] Thus, where the Idaho courts and legislature want to hang their state trial judiciary out to dry, by not allowing review, in time for it to matter, of the exercise of trial jurisdiction that doesn't exist, that's Idaho's business.

[12] For example, do the Minn. courts really have the jurisdiction exercised under a "procedural" view of the c.o.d.?

State court jurisdiction is a state question. So, what does "final" mean in this case?

Taylor filed his Notice of Appeal June 3 and hand-delivered a file-stamped copy to Waco on June 20. Taylor didn't appear for the June 11 or 23 settings in the county court, and the county court went silent. No hearings were set for or rulings entered on Taylor's Sep. 30 motions. Even more telling, no ruling exists for Taylor's pre-trial habeas also filed Sep. 30. The county court knows that after sending the Sep. 9 setting it sent no Notice to Taylor that the case had been taken back off the Docket. Still, the judge said she *hadn't* expected to see Taylor on Oct. 29, as confirmed by her not even calling the case. Taylor documented on Oct. 30, by way of his verified and unchallenged Status Report, the understanding reached Oct. 29. That is to say that there is no "stay" order. The county court unilaterally set the very first date, 2007 Oct. 17. The 2008 Oct. 29 setting was also unilateral. No unilateral setting followed the CCA's Nov. 26 refusal of Taylor's PDR. The county court remained silent. Taylor didn't appear on Jan. 7 for the Docket Call, which event is also commemorated by the court's silence.

Up to here, from the *trial* perspective, this fits the concept of exclusive appellate jurisdiction, i.e., that the appeal concerns a "final" decision. Final decisions come in two types: collateral and merits. Think ***pre-trial sentencing***, which fits both.

Key, now, from the *appellate* perspective is the Mandate. As already detailed, the intent of ***this*** Mandate is clear. Since the appellate court says its Sep. 3 judgment took effect ***when entered***, they intend for this Mandate to ***restore*** trial jurisdiction.

The mere *need* to ***restore*** trial jurisdiction is tantamount to saying that the trial court ***lost*** jurisdiction. Trial courts don't always lose jurisdiction on interlocutory appeals. Thus, there's nothing to ***restore***, unless the appeal involved a **"final"** judgment or decision! Thus, having engaged further reflection, the appellate court now says that they ***did*** have "final" decision jurisdiction, but that they've lost plenary jurisdiction to fix it.

The appeal raises several points, among them the county court's effective refusal to serve its pre-trial order on Taylor, via (A) the court's refusal to sign and serve a written order, coupled with (B) the Reporter's refusal to produce the 20-page Transcript. That's a "final" collateral matter likely to be repeated. *Cf., e.g., Spencer*, 523 U.S. at 17-18.

Key to the factual background of this ordeal is the pre-trial sentence of "probation for life with a bi-monthly check-in." A "sentence" is "final." It typically addresses the merits, but no *de novo* adjudication on the merits exists, which leaves open the collateral nature of this pre-trial sentence. In this context, there are some very obvious *Blakely*, *Booker*, *Arnold* errors. Whether a collateral or a merits-based ruling, pre-trial-sentence-based probation would continue no matter what the duration of the appeal. Reconfirmed as of Jan. 26, the pre-trial sentence motif continues to this very day. "We *refuse* and ***refuse*** and ***refuse*** to give you a special setting, and never mind the agreement; if you don't show up to these bi-monthly check-in's, you'll be arrested!" This form of harassment *ad nauseam ad infinitum* under color sure looks, walks, and quacks like extortion.

As it turns out, we *are* talking about *procedure.*

What process is due? Taylor has appealed what is obviously a "final" decision. Whether collateral or merits-based, it's obviously "final," even if we have to apply estoppel theories to solidify the conclusion. In sum, Taylor expects that as of Feb. 3, if plenary jurisdiction hadn't run out, the appellate court would have recalled the dismissal and reached the merits.

## 2. Does the trial court have jurisdiction during the pendency of a collateral order doctrine appeal?

National perspective.

On one hand, piecemeal appeals are bad. Interlocutory appeals are discouraged, generally, especially in cases characterized as "criminal." Delay in a "criminal" case is bad, generally. [13]

On the other, the policy for federal courts is against simultaneous trial and appellate jurisdiction. *Griggs*. Through Due Process, this policy should be made the policy for state courts, as well.

It stands to reason that if the decision is "final," the normal "automatic stay" on trial activity is preferable to simultaneous jurisdiction, which only increases the risk of inconsistent rulings, the curing of which does nothing but add all the more trouble for everyone concerned. It makes sense, then, that where the trial decision is "final," and where the appeal is initiated, trial court jurisdiction is "automatically stayed" pending the Mandate.

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[13] Which suggests another reason ***why*** the appellate court wouldn't forward Taylor's PDR until Oct. 24, Taylor having filed it on Sep. 5: they agree that this is not a "criminal" case.

This seems all the more imperative where the defendant challenges STATE's standing even to *characterize* a case as "criminal." All "criminal" cases are non-cases until STATE proves standing. *Cf. Austin*, 420 U.S. at 668 (Blackmun, J., dissent); *Deposit Guaranty*, 445 U.S. at 353 (Powell, J., and Stewart, J., dissent); *Williams,* 472 U.S. at 36 (dissent) (citing *Austin*). Some matters never stop being non-cases. *Cf. Rockwell Int'l* (the final pre-trial order confirmed that this was a non-case).

While trial *may* be used to establish jurisdiction, thus also standing, such cases are *still* non-cases, i.e., civil, until STATE proves standing, i.e., an "actual grievance." *TX Dept. of Parks & Wildlife v. Miranda.* Presuming that "actual grievance" into existence relieves STATE of its burden. *Mullaney* (citing *In re Winship*); *Heiner*, 285 U.S. at 329 (tax case; irrebutable presumption issue); *Johnson* (directed verdict of guilt relieved State of its burden). Since STATE has already confessed having no commercial nexus, to proceed at all is to presume standing.

State perspective.

If it's not the time, or the case, or to be the policy, generally, to limit jurisdiction, per Due Process, exclusively to the appellate court when a "final" decision is under review, we still have the question of what process is due, here.

*See* TX R. APP. P. 29.5, 29.5(b). Even in interlocutory appeals, the trial court is prohibited from adversely affecting relief to be addressed on appeal. Where the issue on appeal is from a "final" decision, it's all the more imperative that trial activity cease, as has always been the normal course. *Cf. Dyches*; *Woodson*.

We also have the complication that the county court is serving two roles: trial and appellate: It's largely in the trial mode, but it's a trial *de novo*, not the first trial. So, where *appellate* courts recognize the value in seriatim jurisdiction, does that policy apply to the trial *de novo* "appellate" court?

Contempt.

The county court acted during the pendency of this appeal. Both upper courts denied Taylor's first motion for contempt. The appellate court has denied Taylor's second motion, claiming lack of jurisdiction.

There *is* a self-consistent view where there is (A) a Mandate, overtly confirming exclusive appellate jurisdiction, **and** (B) a *denial* of Taylor's motions for contempt. Even where an appellate court has exclusive jurisdiction, it's not contemptuous for the trial court to continue to update and modify the "final" order. *See* R. 27.

**Extension**—Appellate, supervisory jurisdiction.

In the jurisdictional statement, p.1, a reference is made to this Question. Here's why.

If the state *appellate* system has no jurisdiction to address the issue, and where the issue involves a federal question, doesn't that mean, as a matter of law, that the *trial/appellate* court ***is*** the state court of last resort? *Cf. Powell* (regarding appellate court jurisdiction in Texas). In that § 1257 setting, what does "final" mean? Which body of law provides the standard, state or federal? The fact that the state judges and legislators have limited *state* appellate jurisdiction hardly defeats the existence of review. [14]

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[14] It may simply add to STATE's liability. The right to appeal is established. *Cf.* Art. 44.07. STATE can't take that away on a

Whether the state or federal standard supplies the definition of "final" for this case, Taylor is satisfied that "final" exists here. Now, which state court is the court of last resort for which issue?

One *trial/appellate* ruling "happened" on Nov. 28, 2007. [15] However, no written order has ever been served on Taylor, and the Transcript didn't even ***exist*** until well into the appeal, which unavailability *compelled* the appeal. Also, the *formal* confirmation of "final" didn't really exist until 2009 Jan. 26 and Feb. 10, two months or so after the CCA's ruling.

So, is there a "judgment" per S. CT. R. 13 from a "state court of last resort," at all? If so, does Taylor have 90 days from 2009 Jan. 26 or Feb. 10 to file a petition for cert. directed to the county *trial/appellate* court or the appellate court to have the "final" rulings raising federal questions reviewed? Or, does the time period start 2008 Aug. 13, when the Transcript first appeared, in which case the activation of the state appellate process serves as an Extension as contemplated in S. CT. R. 13.1? And, where TX R. APP. P. 12.6 distinguishes "judgments" from "mandates" and "other orders," leaving no

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whim. *Cf. Crawford* (privilege issue); *but see* TX R. APP. P. 25.2(a)(2) (right determined by statute "and these rules"). Doesn't that right include an appeal that is meaningful, both as to content *and* timing? Thus, where a pre-trial appeal ends the matter, or otherwise protects substantial rights put at risk by a delayed appeal, doesn't STATE defy its own grant of the right of appeal by disabling its appellate courts? *See* Question 3.

[15] The appellate court mentions the "seven months." From that point of view, *see* TX RS. APP. P. 28.1 (acceleration), 38.6(a), 25.1(e), 26.2(a)(1). *But see* R. 26.1 (signature required). When/where is any authorized signature, here? *Cf.* A-17, A-19, A-20, A-23, A-24, A-26 (no spec. set), A-28 (same), A-30 (same). *See also* R. 27 and App. B.

mechanism by which to obtain review by the CCA, does the 90-day time period on that Mandate issue start when the otherwise unreviewable Mandate is filed? Regarding the ruling, also not a "judgment" reviewable by the CCA, on Taylor's second contempt motion, when does *that* 90-day period start?

Statutory Challenge

### 3. Does CIV. PRAC. & REM. CODE § 51.014 violate Due Process?

Litigants in this state court system have a right to an appeal. *Cf.* Arts. 44.02, 44.07. CIV. PRAC. & REM. CODE § 51.014 recognizes interlocutory appeals, some of which items are "final" decisions.

The problem is that this provision doesn't recognize "collateral order doctrine" appeals. On the one hand, states don't have to create courts that have authority to deal with federal issues. *Johnson v. Fankell.* However, on the other, STATE has well protected the right of appeal.

Thus, it's a shell game to say, on the one hand, "Our *trial* courts may address all issues, state and federal," and "All litigants in our *trial* courts have the right to appeal," while saying on the other hand, "Our *appellate* courts can't help you today, because they don't really have jurisdiction to review the 'final' pre-trial ruling raising federal questions."

Appeal has to be meaningful, which includes the time factor. STATE defies the right of appeal by not providing jurisdiction and procedures by which litigants may have meaningful *review* of all "final" decisions within the jurisdiction of the *trial* courts.

Specific Issues

### **4. What's the big deal with the "no driver's license" ticket?**

Commerce cannot be compelled.

*Planters' Bank* ("government" as proprietor).

*Griswold* (STATE ***cannot*** compel engagement of commerce).

Lev. 19:35-36 (honest system of weights and measures).

*Compelled* agreement is the exact *antithesis* of the very soul of "this state." For example, parties may not be compelled to accept magistrate participation. *Gonzalez.* A coerced will is not evidence. *See* 1 PAGE, THE LAW OF WILLS, §§ 5.7, 15.11. A coerced trust is not evidence. BOGERT §§ 42 at 434, 44 at 452 and n.16. A coerced commercial transaction is not evidence. U.C.C. § 1-103. In the ultimate setting, a coerced confession is not evidence. *Escobedo*; *Miranda.* "Evidence" not admitted at trial and not agreed to in sentencing is inadmissible for sentencing. *Cf. Arnold* (vacated per *Booker*). In sum, the coercive environment vitiates the very "evidence" it purports to create. *See Rudzewicz*, 471 U.S. at 486; *Ohralik*; *Bates.*

Choice of law cannot be compelled.

Choice of law is as negotiable as any other element of a deal. *Ogden v. Saunders.*

Political/religious affiliation cannot be compelled.

The "driver's license" doubles as an "ID card" for STATE "membership." Taylor has no interest in membership in "church of STATE OF TEXAS."

### 5. May the trial court compel Taylor to trial without first delivering the transcript of that 28 November hearing?

There is no other documentation of the orders.

Since the trial court has never served a written order from that hearing on Taylor, Taylor concludes that there is no written order. Without a document, Taylor's meaningful, timely access to the appellate courts is thwarted. *Cf. Boddie*; *Harbury.*

Given the circumstances, the likelihood of Taylor's receiving more of the same abuse is high. *Spencer*, 523 U.S. at 17-18 (mootness exception).

It's also a witness' statement.

Taylor is entitled to discovery of witness statements, including his own. Discovery abuse is denial of access and violation of Due Process. *Cf. Compagnie des Bauxites*; *Hammond Packing Co.*, 212 U.S. at 350-51; *Roadway Express, Inc*; *Nat'l Hockey League*; *Societe Internationale*, 357 U.S. at 212-13 (noting that discovery sanctions are not to be based on inability, but rather on willfulness, bad faith, or fault of the party to be sanctioned; p.212 and n.2; the party with the burden who is unable to establish that burden is not benefited by a failure to produce the relevant documents; p.212-13).

### 6. Where a deputy clerk is the complainant, is the clerk's office too "interested" to qualify as an agent for service?

No complainant is "disinterested" enough to serve the complaint. *Cf.* TX R. CIV. P. 103; FED. R. CIV. P. 4(c)(2); Art. 45.202.

Which deputy clerk "complained" and which "served" are fact issues, but both the Transcript and Taylor's Brief, asserting they are one in the same, remain unchallenged.

### 7. Where a deputy clerk is the complainant, is the municipal court a witness/party, thereby triggering *disqualification*?

Certifying and testifying are two different things. Clerks may *certify* "complaints." Art. 45.019(e)(2). That authority in no way contemplates, much less blesses or tolerates, crossing the line that separates the powers to become a *witness* for STATE.

Agency theory applied twice.
The deputy is the agent of the Clerk.
The Clerk is the agent for the court.
That makes the deputy the agent of the court, which effectively turns the judge into the complainant, all the more so where the sole reason the deputy is in a position to "complain" about anything is a direct by-product of her employment.

The manifest ***disqualification*** problem.
Judges *may* be witnesses, even complainants. But, they *may not* be both the complainant and the judge in the same case. TX R. CIV. EVID. 605 *Bradley*, 990 S.W.2d at 248, 249. ***Disqualification*** is distinguished from mere recusal. *See* TX RS. CIV. P. 18a, 18b; *Tesco Am., Inc.*, 221 S.W.3d at 551-52 n.1, 553 n.10, 555 n.27. A complainant "has an interest in the subject matter in controversy." *Cf.* TX R. CIV. P. 18b(1)(b); *McKenna*. *See also Brown*, 843 F.2d at 851; *In re Murchison*.

### 8. Where a deputy clerk is the complainant, can that deputy remain a "custodian of records?"

Witness for STATE serving simultaneously as custodian of records?? The "appearance of impropriety" factor skyrockets off the top of the charts. The conflict of interest, which manifestly sounds in Due Process, is egregious. The clerk/ witness and the case file can't be in the same place day in and day out, and the file has to stay.

## Issues included for jurisdictional purposes

### 9. Does TX TRANS. CODE § 521.021 define a crime?

Where's the mens rea? Where's the actus reus? Where's the punishment level? Hence, where's the Notice regarding any crime? *Carhart*. There's no crime defined until § 521.025.

### 10. Does the complaint charge a crime?

It mentions only § 521.021. *See* Points 9 and 11.

### 11. Where's the commercial nexus?

*See* Points 9 and 10. "Traveling" and "operating" are two entirely different things. There is no commercial nexus, here. *Cf. Lopez*.

If there were a commercial nexus, breach of what type of agreement may be enforced criminally?

## 12. What does "operate" mean?

Where "operate" is read to mean and include "traveling," ***all*** statutes using and referring to such term, including § 521.021 and § 521.025, are instantly overbroad and facially void.

## 13. What does "this state" mean?

*See* § 521.021, § 521.025, and TX PENAL CODE § 1.04. Where there is no evidence of any commercial nexus recognizable in "this state," STATE has no standing.

## 14. Does Art. 45.018(b) violate Due Process?

There must be Notice. *Cf. O'Grady.*

What is "notice of a complaint?" First, there must ***be*** a "complaint." Then, it must be ***filed***. Then, STATE must ***serve*** it as it would serve the original pleading in any case. *Cf. Murphy Bros.* (sequence matters regarding filing and serving the original pleading).[16] *See also Lloyd v. Alexander*, 5 U.S. (1 Cranch) at 366 ("A citation not served is as no citation.").

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[16] *Murphy Bros.* is a civil case, but all "criminal" cases are non-cases, i.e., civil, until STATE proves standing. It's impossible for STATE to prove standing where there is no charging instrument even filed, much less served. The authority to determine authority is ***civil***. *Marbury v. Madison*. ***Civil*** authority is inherent. *Cf. United Mine Workers.* STATE must prove standing in the criminal context before there's anything even remotely possible to label as ***criminal***.

If Art. 45.018(b) is read to disallow Notice, then it violates Due Process.

There *are* alternatives. *Cf.* Art. 27.14(d) (waiver and signed agreement). But, alternatives apply only for those who *waive* Notice, knowingly or otherwise. Also, there is no such signed agreement, here.

### 15. Is an arraignment a "proceeding" for purposes of Art. 45.018(b)?

*See Rothgery* (the arraignment ***is*** a "proceeding" for purposes of appointment of counsel).

Thus, per Art. 45.018(b), a copy of the "complaint" has to be delivered to the defendant at least one day before the arraignment, or before whatever proceeding may precede the arraignment. The arraignment was on 2007 Apr. 5. It was the second of three proceedings that morning. The complaint wasn't delivered until after the third proceeding, which rendered it impossible for Taylor to plea (to anything except the jurisdition of the court).

If service was sufficient, Notice was still late.

## New Issues—Questions to Certify

### 16. Since the petition for discretionary review doubles as a motion to reconsider, see TEX. R. APP. P. 50, is that compelled motion considered denied by operation of law when the petition is filed in Austin? (This affects plenary jurisdiction.) And, does TEX. R. APP. P. 49.4 violate Due Process?

TX R. APP. P. 49 uses the term "rehearing," until R. 49.7, where we find "reconsider." TX R. APP. P. 50 uses the term "reconsider." Unless we're saying form may subvert substance, Taylor is hard pressed to distinguish the two terms.

Despite TX R. APP. P. 50, the appellate court states that Taylor filed no "motion for rehearing" that would alter the 60-day plenary jurisdiction period. As discussed in the facts section, *supra*, ***all*** appellants are procedurally, even jurisdictionally, ***compelled*** to file "motions to reconsider." That's the PDR's inherent "secondary" purpose. That's why PDRs are filed with the *appellate* courts, not the *high* courts. TX R. APP. P. 68.3. Given the ***compelled*** nature of the motion to reconsider, to file a PDR is to file a motion to reconsider. Further, it must follow that such motion is denied by operation of law when the PDR is filestamped by the CCA.

This issue arises in the contempt context. Plenary jurisdiction is not the focus for Taylor's motion(s) for contempt. However, if plenary jurisdiction ***is*** the focus, to address the *process* won't change the outcome. Feb. 3 still follows Dec. 23. But it will change the *process* by which that outcome is determined, which *process* affects every PDR case filed in Austin. Since this issue is effectively beyond any state review *Taylor* is in a position to initiate, [17] it's moot, unless this Court may certify the question or address it directly on Due Process grounds.

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[17] TX R. APP. P. 12.6 distinguishes "judgments" from "mandates" and "other orders." A PDR is based on a "judgment."

Regarding TX R. APP. 49.4, [18] there is some inherent confusion between "duties" and "rights." Either the PDR serves two purposes, or it doesn't. Either filing the PDR (timely) with the *appellate* court is jurisdictional, or it isn't. *See* RS. 50, 68.3 (dual purpose). Since the PDR is both procedurally and jurisdictionally compelled ***also*** to be a motion to reconsider, it's ***impossible*** for an appellate court to deny the *litigant's* "right" of "rehearing" for any reason at any time, for it is the *court's* ***duty*** to engage that reconsideration. In short, R. 49.4 violates Due Process. *Cf. Crawford.*

**Remedies and Relief Requested**

Given the foregoing, Taylor requests

1. That this Court grant this petition, issue the writ or writs of certiorari, and take jurisdiction of this matter as a whole;
2. That this Court address all the issues possible, confirming that the appellate court did have jurisdiction over this appeal, ultimately ruling that Due Process has been violated, and, if possible, that STATE's case be dismissed;
3. That this Court rule that TX CIV. PRAC. & REM. § 51.014 violates Due Process;
4. That this Court address the PDR's jurisdictionally compelled dual nature, including the plenary jurisdiction math, R. 50, and R. 49.4;

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[18] Revisiting the intent of the Mandate, if a motion is expected, then the right is not denied. Neutral, but leaning.

5. That this Court confirm, with or without recognizing the exclusive appellate jurisdiction, that the trial court breached her agreement with Taylor regarding trial court inactivity pending resolution of this appeal, by ordering him arrested as of Jan. 26 and that he post more Bond, given that this petition wasn't due yet;
6. The opportunity to brief any additional issues the Court may identify;
7. Oral argument if the case warrants, otherwise the non-argument calendar;
8. Costs; and
9. Any and all relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Harmon Taylor
Harmon L. Taylor
I reserve all my rights

c/o 7014 Mason Dells Drive
Dallas, TX 75230

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### Rule 14.1(i)(i)—Discretionary Review

**2008 Nov 26—Petition Refused**

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

Wednesday, November 26, 2008
RE: Case No. PD-1523-08
COA#: 10-08-00208-CR
STYLE: TAYLOR, HARMON LUTHER

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Louise Pearson, Clerk

HARMON LUTHER TAYLOR
7014 MASON DELLS DR
DALLAS TX 75230

[Pitney Bowes meter mark:
UNITED STATES POSTAGE
PITNEY BOWES
02 1M $\$\ 00.27^{0}$
0004234358 NOV 26 2008
MAILED FROM ZIP CODE 78701 ]

## 2008 Oct 28—Motion for Contempt Denied

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

10/28/2008
COA#: 10-08-00208-CR TC#: 07-1392
RE: Case No. PD-1523-08
STYLE: TAYLOR, HARMON LUTHER

On this day, this Court has denied the Appellant's Pro Se motion for contempt.

Louise Pearson, Clerk

HARMON LUTHER TAYLOR
7014 Mason Dells Dr.
Dallas, TX 75230

[Pitney Bowes meter mark:
UNITED STATES POSTAGE
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02 1A $ 00.27$^0$
0004623940 OC T 29 2008
MAILED FROM ZIP CODE 78701 ]

**2008 Oct 24—PDR Received and Filed**

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

Friday, October 24, 2008
RE: Case No. PD-1523-08
COA#: 10-08-00208-CR
STYLE: TAYLOR, HARMON LUTHER

The appellant's pro se petition for discretionary review has this day been received and filed.

Louise Pearson, Clerk

HARMON LUTHER TAYLOR
7014 MASON DELLS DR
DALLAS TX 75230

[Pitney Bowes meter mark:
UNITED STATES POSTAGE
PITNEY BOWES
02 1A $ 00.27$^0$
0004623940 OC T 29 2008
MAILED FROM ZIP CODE 78701 ]

## Rule 14.1(i)(ii)—Additional Orders

## State appellate court

**2008 Sep 3—Opinion**

[Seal of THE STATE OF TEXAS]

**IN THE**
**TENTH COURT OF APPEALS**

**No. 10-08-00208-CR**

**HARMON LUTHER TAYLOR,**
**Appellant**

**v.**

**THE STATE OF TEXAS,**
**Appellee**

**From the County Court at Law**
**Walker County, Texas**
**Trial Court No. 07-1392**

## OPINION

Harmon Luther Taylor was convicted in municipal court of operating a motor vehicle without a driver's license. Taylor appealed to the county court at law where his case remains pending. After a hearing, that court orally denied "Taylor's Special Appearance, Motion to Strike or Rename 17 October Setting, First Motion to Dismiss, and First Motion to

Quash." Seven months later, Taylor filed a "First Verified Notice of Appeal under the Collateral Order Doctrine." We will dismiss this interlocutory appeal for want of jurisdiction.

## Background

Taylor raised several complaints in his "Special Appearance, Motion to Strike or Rename 17 October Setting, First Motion to Dismiss, and First Motion to Quash" (hereinafter, "Taylor's Motion"). Procedurally, he contended: (1) the county court at law lacked subject matter jurisdiction, personal jurisdiction, or venue; (2) the October 17 setting for an arraignment should be "struck or renamed" because an arraignment is unnecessary in an appeal by trial de novo under article 45.042(b) of the Code of Criminal Procedure; (3) the traffic ticket he received does not satisfy the requirements for a complaint under article 45.019; (4) he did not receive timely or adequate notice of the complaint under article 45.018(b); and (5) asserting peculiar definitions for the "place" called "this state," he argued that the "choice of law" for his case is "the Law of the Land" and thus the State's "theory of its case arises under maritime law."

Substantively, Taylor's Motion asserted that no driver's license is required to operate a vehicle if the driver is engaged in non-commercial activity.

Taylor's Motion contains the following "Summary of the non-compliance":

> The "complaint" fails to satisfy Art. 45.019. The authority of the State of Texas is usurped by a federal corporation called STATE OF TEXAS,

> under which latter name there is no authority to initiate any complaint. And, there is no offense defined, much less committed. The mixing and matching of Law of the Land and "law" of "this state" so permeates the "complaint" as to render it completely confused and unintelligible.

The court orally denied Taylor's Motion following a hearing conducted on November 28, 2007. Taylor filed his notice of appeal on June 3, 2008. [⊥ 2]

The Clerk of this Court notified Taylor by letter dated July 3 that his appeal to this Court appeared subject to dismissal for want of jurisdiction. This notice warned Taylor that the appeal may be dismissed if he did not (1) specify the order or orders he is challenging and (2) state the legal basis for this Court to exercise jurisdiction over the appeal. In response, he explains that he is appealing the denial of Taylor's Motion and asserts that this Court has jurisdiction under the collateral order doctrine which is recognized in federal appellate courts and which Taylor characterizes as "a procedural right applicable to the states via the 14th Amendment."

## Collateral Order Doctrine

The collateral order doctrine is a federal doctrine which permits appellate review of a certain interlocutory rulings "which finally determine claims of right separate from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate jurisdiction be deferred until the whole case is adjudicated." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 798, 109 5. Ct.

1494, 1498, 103 L. Ed. 2d 879 (1989) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 1225-26, 93 L. Ed. 2d 1528 (1949)). To fit within this narrow exception, "an order must (1) 'conclusively determine the disputed question,' (2) 'resolve an important issue completely separate from the merits of the action,' and (3) 'be effectively unreviewable on appeal from a final judgment.'" *Id.* at 799, 109 5. Ct. at 1498 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S. Ct. 2454, 2458, 57 L. Ed. 2d 351 (1978)). [⊥ 3]

The Supreme Court has specified three types of orders in criminal cases to which the collateral order doctrine applies.

> We have interpreted the collateral order exception "with the utmost strictness" in criminal cases. Although we have had numerous opportunities in the 40 years since *Cohen* to consider the appealability of prejudgment orders in criminal cases, we have found denials of only three types of motions to be immediately appealable: motions to reduce bail, motions to dismiss on double jeopardy grounds, and motions to dismiss under the Speech or Debate Clause. These decisions, along with the far more numerous ones in which we have refused to permit interlocutory appeals, manifest the general rule that the third prong of the *Coopers & Lybrand* test is satisfied only where the order at issue involves "an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial."

*Id*. (quoting *Flanagan v. United States*, 465 U.S. 259, 265, 104 5. Ct. 1051, 1055, 79 L. Ed. 2d 288 (1984); *United States v. MacDonald*, 435 U.S. 850, 860, 98 S. Ct. 1547, 1552, 56 L. Ed. 2d 18 (1978)) (other citations omitted).

## Due Process

Taylor argues that the collateral order doctrine is a procedural right applicable to the states through the Due Process Clause of the Fourteenth Amendment. However, the only federal rights which have been made "applicable to the states" through the Due Process Clause in this fashion are the majority of those rights set out in the first eight amendments to the United States Constitution. *See* Sam A. Mullin, Comment, *The Place for Prayer in Public Policy: A Reevaluation of the Principles Underlying the Decision in Santa Fe Independent School District v. Doe*, 44 S. TEX. L. REV. 555, 569 n.59 (2003); *see also id.* at 568 n.54 ("The only provisions of the first eight amendments that have not been incorporated are the Second and Third Amendments, the Fifth Amendment's Grand [⊥ 5] Jury Indictment Clause, and the Seventh Amendment.") (quoting Note, *Rethinking the Incorporation of the Establishment Clause: A Federalist View*, 105 HARV. L. REV. 1700, 1700 n.3 (1992)); *see also Albright v. Oliver*, 510 U.S. 266, 272-73, 114 S. Ct. 807, 812-13, 127 L. Ed. 2d 114 (1994) (discussing cases which have held various "procedural protections contained in the Bill of

Rights" applicable to the states). [1]

To the extent Taylor's due process claim is based on principles of procedural due process, we observe that procedural due process in a criminal trial at a minimum requires notice and a meaningful opportunity to defend. *See Jackson v. Virginia*, 443 U.S. 307, 314, 99 S. Ct. 2781, 2786, 61 L. Ed. 2d 560 (1979) ("a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend"); *Gollihar v. State*, 46 S.W.3d 243, 246 (Tex. Crim. App. 2001) (same). And in a first appeal of right (as provided in Texas), the procedures employed "must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution." *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S. Ct. 830, 834, 83 L. Ed. 2d 821 (1985).

The trial court conducted a hearing on Taylor's Motion, and he does not contend at this juncture that he was denied a meaningful opportunity to present the allegations contained therein for that court's consideration. It also appears that the allegations of Taylor's Motion can be fully addressed in an appeal following a conviction, if any, in [⊥ 6] the county court at law. [2] *See, e.g.*, *State v. Neesley*, 239 S.W.3d 780 (Tex. Crim. App. 2007) (addressing issue of statutory construction); *Bible v. State*, 162 S.W.3d 234 (Tex. Crim. App. 2005) (determining whether Louisiana law governs admissibility of defendant's confession); *Hardeman v. State*, 1 S.W.3d 689 (Tex. Crim. App. 1999) (addressing propriety of arraignment procedures); *Witt v. State*, 237 S.W.3d 394 (Tex. App.—Waco 2007, *pet. ref'd*) (determining whether venue proved); *Schinzing v. State*, 234 S.W.3d 208 (Tex. App.—Waco 2007, no pet.) (addressing jurisdiction of municipal court and county court); *Chafin v. State*, 95 S.W.3d 549 (Tex. App.—Austin 2002, no pet.) (criminal charge dismissed due to trial court's lack of subject matter jurisdiction or personal jurisdiction); *Burling v. State*, 83 S.W.3d 199 (Tex. App.—Fort Worth 2002, *pet. ref'd*) (addressing adequacy of notice).

---

[1] Although these rights apply to the states, the Sixth Amendment right to a jury trial does not apply to "petty" offenses, defined as those with a maximum authorized prison or jail term of six months. *Lewis v. United States*, 518 U.S. 322, 325-26, 116 S. Ct. 2163, 2166-67, 135 L. Ed. 2d 590 (1996). And the Sixth Amendment right to counsel applies to only a criminal prosecution "that actually leads to imprisonment." *Alabama v. Shelton*, 535 U.S. 654, 657, 122 S. Ct. 1764, 1767, 152 L. Ed. 2d 888 (2002) (quoting *Argersinger v. Hamlin*, 407 U.S. 25, 33, 92 S. Ct. 2006, 2010, 32 L. Ed. 2d 530 (1972)).

For these reasons, we hold that due process does not require that Texas appellate courts employ the collateral order doctrine. *See Permian Corp. v. Davis*, 610 S.W.2d 236, 237-38 (Tex. Civ. App.—El Paso 1980, *writ ref'd*) (declining to employ collateral order doctrine in civil appeal).

---

[2] Subject to the limitations on this Court's jurisdiction provided by article 4.03 of the Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 4.03 (Vernon 2005) (when defendant appeals from inferior court to county court, this Court's appellate jurisdiction is limited to cases in which the fine imposed by the county court exceeds $100 "unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based").

[N.B. We'll see if this "tyranny is Ok up to $100" provision survives direct challenge. *See* No. 05-08-00707-CV. *HLT*)

## Jurisdiction

Because there has been no judgment of conviction in the county court at law, this is by definition an interlocutory appeal. "The courts of appeals do not have jurisdiction to review interlocutory orders unless that jurisdiction has been expressly granted by [⊥ 7] law." *Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991); *Ahmad v. State*, 158 S.W.3d 525, 526 (Tex. App.—Fort Worth 2004, *pet. ref'd*). Taylor has not identified any statutory provision granting this Court jurisdiction over his interlocutory appeal, and we are not aware of any. Accordingly, we dismiss this appeal for want of jurisdiction.

FELIPE REYNA
Justice

Before Chief Justice Gray,
Justice Vance, and
Justice Reyna
(Chief Justice Gray concurring with note)*
Appeal dismissed
Opinion delivered and filed September 3, 2008
Publish
[CR25]

* ("Chief Justice Gray concurs in the result. A separate opinion will not issue. He notes, however, that the Tenth Court of Appeals is a court of limited jurisdiction, particularly when it comes to the review of matters arising from criminal proceedings. In this regard, the final paragraph is the only paragraph necessary for the disposition of this proceeding, rendering the balance of the opinion dicta.")

## 2008 Sep 3—Judgment

[Seal of THE STATE OF TEXAS]

**TENTH COURT OF APPEALS**
McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1327
Phone: (254) 757-5200 Fax: (254) 757-2822

**Chief Justice**
*Tom Gray*

**Clerk**
*Sharri Roessler*

**Justices**
*Bill Vance*
*Felipe Reyna*

September 3, 2008

In accordance with the enclosed Opinion, below is the judgment in the numbered cause set out herein to be entered in the Minutes of this Court as of the 3rd day of September 2008.

| | |
|---|---|
| 10-08-00208-CR | HARMON LUTHER TAYLOR v. THE STATE OF TEXAS – ON APPEAL FROM THE COUNTY COURT AT LAW OF WALKER COUNTY – TRIAL COURT NO. 07-1392 – DISMISSED – Opinion by Justice Reyna, Chief Justice Gray concurring with a note: |

"This cause came on to be heard on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that the appeal should be dismissed, it is ordered, adjudged and decreed by the Court that the appeal be dismissed, and that the appellant pay all costs in this behalf expended and that this decision be certified below for observance."

---

**2008 July 3—Show Cause Order**

[Seal of THE STATE OF TEXAS]

**TENTH COURT OF APPEALS**
McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1327
Phone: (254) 757-5200 Fax: (254) 757-2822

**Chief Justice**
*Tom Gray*

**Justices**
*Bill Vance*
*Felipe Reyna*

**Clerk**
*Sharri Roessler*

July 3, 2008

Harmon Luther Taylor
7014 Mason Dells Drive
Dallas, TX 75230

**RE:** Court of Appeals Number: 10-08-00208-CR
Trial Court Case Number: 07-1392

**STYLE:** Harmon Luther Taylor
v.
The State of Texas

Harmon Luther Taylor has filed a notice of appeal with regard to his prosecution for a traffic offense in Walker County, but it is not clear what order or orders Taylor is challenging. In addition, it does not appear that there has yet been a final judgment of conviction in the County Court of Law in Taylor's case.

This Court does not have jurisdiction to review an order in a criminal case unless that jurisdiction is expressly granted by the Texas Constitution or by some "statutory provision." *See Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991) (citing TEX. CONST. art. V, § 6); *accord Vargas v. State*, 109 S.W.3d 26, 29 (Tex. App.—Amarillo 2003, no pet.); *Benford v. State*, 994 S.W.2d 404, 409 (Tex. App.—Waco 1999, no pet.); *Ex parte Shumake*, 953 S.W.2d 842, 844 (Tex. App.—Austin 1997, no pet.).

Therefore, this appeal may be dismissed for want of jurisdiction unless, within 14 days after the date of this letter, Taylor or any party desiring to continue the appeal files a response with this Court: (1) identifying with particularity the order being appealed; and (2) stating the legal basis for this Court to exercise jurisdiction over the appeal.

Sincerely,

Sharri Roessler, Clerk

*/s/ Nell Hegefeld*
By: Nell Hegefeld, Deputy Clerk

CC: David P. Weeks
Hon. Barbara W. Hale

---

## 2008 Sep 23—First Motion for Contempt Denied

[Seal of THE STATE OF TEXAS]

**TENTH COURT OF APPEALS**
McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1327
Phone: (254) 757-5200 Fax: (254) 757-2822

**Chief Justice**
*Tom Gray*

**Clerk**
*Sharri Roessler*

**Justices**
*Bill Vance*
*Felipe Reyna*

September 23, 2008

Harmon Luther Taylor
7014 Mason Dells Drive
Dallas, TX 75230

David P. Weeks
Criminal District Attorney
1036 11th St.
Huntsville, TX 77340

**RE:** Court of Appeals Number: 10-08-00208-CR
Trial Court Case Number: 07-1392

**STYLE:** Harmon Luther Taylor
v.
The State of Texas

Appellant's first motion for contempt is denied by the Court today[.]

Sincerely,

Sharri Roessler, Clerk

/s/ *Nell Hegefeld*
By: Nell Hegefeld, Deputy Clerk

## County Court

**2007 Aug 10—First order, Notice of *Third* Arraignment, signed by Court Coordinator**

COUNTY COURT AT LAW
WALKER COUNTY, TEXAS

### *ORDER*

### *SETTING COURT APPEARANCE*

THE STATE OF TEXAS VS.
Harmon L. Taylor

COUNTY COURT CAUSE NO.
07-1392

MISDEMEANOR CHARGE
APPEAL/No Driver's License

DATE OF OFFENSE [3]
January 24, 2007

### *NOTICE TO DEFENDANT*

You are hereby notified that the above misdemeanor case(s) is set for Arraignment [4] on the

---

[3] If it's already determined to be an offense, what's the point of the trial *de novo*? Date of "ticket?" of *alleged* offense? *HLT*

[4] First arraignment: 2007 April 5, municipal court, following hearing motion.

Second arraignment: 2007 May 17, municipal court, immediately before trial, as in right after the panel was seated.

Third arraignment: hasn't happened, yet. *HLT*

**17TH** day of **OCTOBER, 2007 at 1:30 p.m,** before the COUNTY COURT AT LAW of Walker County, Texas, located on the FIRST FLOOR, COUNTY COURTHOUSE, Huntsville, Texas.

You are advised:

(1) If you do not appear as directed your bond will be forfeited and a warrant issued for your arrest.

(2) Your attorney must also be present.

(3) Witnesses will not be needed at this appearance.

(4) You may contact the prosecuting attorney Trey Thompson or Brian Klas at 936/435-2441 for information regarding this case and/or for plea negotiations before the actual appearance date.

***THIS NOTICE IS IN LIEU OF ALL OTHER NOTICES***

*/s/ V Byers*
Vickii Byers
Court Coordinator
Walker County Court at Law

Mailed: 8-10-07
Copies: DA
Court File

## 2007 Sep 21—Clerical response to Taylor's Special Appearance, Motion to Strike or Rename 17 October Setting, First Motion to Dismiss, and First Motion to Quash

(SEAL OF THE STATE OF TEXAS)

**BARBARA HALE**
JUDGE, COUNTY COURT AT LAW

Walker County
1100 University Avenue
Suite 102
Huntsville, Texas 77340
(936) 436-4919
FAX: (936) 436-4920
wccl@co.walker.tx.us

DOLORES B. LABAY
Administrator

September 21, 2007

Mr. Harmon Luther Taylor
7014 Mason Dells Drive
Dallas, TX 75230
RE: 07-1392
Offense: Appeal—No Driver's License

Dear Mr. Taylor:

The above referenced case is set for Arraignment on October 17, 2007 at 1:30 p.m. [5] If you fail to appear a warrant will be issued for your arrest.

---

[5] The Fiat with the verified motions allowed the court to enter a ruling without the need for an evidentiary hearing. *HLT*

Sincerely,

*/s/ Dolores B. Labay*

Dolores B. Labay

---

**2007 Oct 17—First setting**

CAUSE NO. *07 - 1392*

| | |
|---|---|
| STATE OF TEXAS | IN THE COUNTY COURT AT LAW |
| VS. | OF |
| *Harmon Taylor* | WALKER COUNTY, TEXAS |

## CASE RESET FORM

The undersigned acknowledges this case is reset for:

ARRAIGNMENT________, 200____ at ______ M.
1ST PRETRIAL________, 200____ at ______ M.
2ND PRETRIAL________, 200____ at ______ M.
MOTIONS ________, 200____ at ______ M.
CALL DOCKET *11-28*, 200*7* at *8:30* M. *A*
*Docket Call* [6]

---

[6] Marginal note by Taylor. *HLT*

JURY TRIAL *12-17*, 200*7* at *8:00* M. *A*

→ *trial date*[7]

BENCH TRIAL ________, 200____ at ______ M.

---

DEFENDANT'S ~~WAIVER OF ARRAIGNMENT~~

Defendant hereby acknowledges that he/she is the

*"complaint"*

same person named in the ~~information,~~

~~waives formal arraignment~~ *NO*

in the above entitled and numbered cause

~~and enters a plea of Not Guilty.~~ *NO*

*Harmon Taylor*
*17 Oct A.D. 2007*[8]

**DEFENDANT MUST BE PRESENT**

| | |
|---|---|
| */s/ Labay*[9] | *X /s/ Harmon Taylor* |
| Court Coordinator | Defendant<br>*17 Oct A.D. 2007* |

---

[7] Marginal note by Taylor. *HLT*

[8] Marginal note confirming negotiations made to this form by HLT. Under threat of arrest, the county court had Taylor drive to and from Huntsville to fill out this form, which, without "negotiation," would have constituted a waiver of an extremely significant issue in this case. Stealth, not law, but stealth. *HLT*

[9] The circle Ms. Labay drew around her name is not reproduced, here. *HLT*

____________________
(Print) Attorney for
Defendant

Approved ________________
Judge

____________________
(Sign) Attorney for
Defendant

**DO NOT LOSE THIS FORM**

________________
Telephone

**THIS COURT WILL NOT
REPEAT THIS COURT DATE
TO YOU ON THE TELEPHONE.**

*10-17-07*
Date

---

### 2007 Nov 28—Hearing on Taylor's motions—All motions denied

Upon recorded, evidentiary hearing, during which Taylor substantially presented his defense, the court denied all motions viva voce. *See* Tr. of 2007 Nov. 28.

---

## 2007 Dec 14—Second setting, Email follow-up to phone conversation

Subject: Confirming Docket Call of 6 Feb 2008
From: "Harmon L. Taylor" <holmes221@earthlink.net>
Date: Fri, 14 Dec 2007 21:07:38 +0000
To: dlabay@co.walker.tx.us

14 December A.D. 2007

Ms. Labay:

Thank you for the return phone call.

I have updated my calender [sic] to show the following:

We are rescheduled for Docket Call on 6 February 2008, at 8:30 a.m. (local time) for a trial during the week of 19 February 2008.

Have a great holiday season.

Harmon L. Taylor
Dallas, Texas

**2008 Feb 6—THIRD setting**

CAUSE NO. *07 - 1392*

STATE OF TEXAS — IN THE COUNTY COURT AT LAW
VS. — OF
*Harmon Taylor* — WALKER COUNTY, TEXAS

## CASE RESET FORM

The undersigned acknowledges this case is reset for:

ARRAIGNMENT ________, 200____ at ______ M.
1ST PRETRIAL ________, 200____ at ______ M.
2ND PRETRIAL ________, 200____ at ______ M.
MOTIONS ________, 200____ at ______ M.
CALL DOCKET *4-16*, 200*8* at *8:30* M. *A*
JURY TRIAL *4-28*, 200*8* at *8:00* M. *A*
BENCH TRIAL ________, 200____ at ______ M.

---

## ~~DEFENDANT'S WAIVER OF ARRAIGNMENT~~

*HLT 6 Feb*
*A.D. 2008*

~~Defendant hereby acknowledges that he/she is the same person named in the information, waives formal arraignment in the above entitled and numbered cause and enters a plea of Not Guilty.~~

**DEFENDANT MUST BE PRESENT**

*/s/ Labay*
Court Coordinator

*/s/ Harmon Taylor*
Defendant
*6 Feb*
*2008*
*A.D.*

____________________
(Print) Attorney for Defendant

Approved ________________
Judge

____________________
(Sign) Attorney for Defendant

**DO NOT LOSE THIS FORM**

________________
Telephone

**THIS COURT WILL NOT REPEAT THIS COURT DATE TO YOU ON THE TELEPHONE.**

*2-6-08*
Date

---

**2008 Apr 28—FOURTH setting**

CAUSE NO. *07 - 1392*

STATE OF TEXAS — IN THE COUNTY COURT AT LAW

VS. — OF

*Harmon Taylor* — WALKER COUNTY, TEXAS

## CASE RESET FORM

The undersigned acknowledges this case is reset for:

ARRAIGNMENT ________, 200____ at ______ M.
1ST PRETRIAL ________, 200____ at ______ M.
2ND PRETRIAL ________, 200____ at ______ M.
MOTIONS ________, 200____ at ______ M.
CALL DOCKET *6-11-08*, 200*8* at *8:30 A* M.
JURY TRIAL *6-23-08*, 200*8* at *8:00 A* M.
BENCH TRIAL ________, 200____ at ______ M.

---

~~DEFENDANT'S WAIVER OF ARRAIGNMENT~~

*HLT*
*28 Apr A.D.*
*2008*

~~Defendant hereby acknowledges that he/she is the same person named in the information, waives formal arraignment in the above entitled and numbered cause and enters a plea of Not Guilty.~~

**DEFENDANT MUST BE PRESENT**

/s/ *Byers* [10]
Court Coordinator

/s/ *Harmon Taylor*
Defendant
*28 Apr AD 2008*

(Print) Attorney for Defendant

Approved ______________
Judge

(Sign) Attorney for Defendant

**DO NOT LOSE THIS FORM**

Telephone

**THIS COURT WILL NOT REPEAT THIS COURT DATE TO YOU ON THE TELEPHONE.**

*28 Apr 2008*
Date

---

[10] *See* 10 Aug 2007 "Order," ***Third*** Arraignment, *supra. HLT*

**2008 Sep 9—FIFTH setting**

COUNTY COURT AT LAW
WALKER COUNTY, TEXAS

## *ORDER*

## *SETTING COURT APPEARANCE*

THE STATE OF TEXAS VS.
Harmon Luther Taylor

COUNTY COURT CAUSE NO.
07-1392

MISDEMEANOR CHARGE
APPEAL/No Driver's License

DATE OF OFFENSE [11]
01-24-07

## *NOTICE TO DEFENDANT*

You are hereby notified that the above misdemeanor case(s) is set for **DOCKET CALL October 29, 2008 at 9:00 a.m. and JURY TRIAL November 17, 2008 at 9:00 a.m.,** before the COUNTY COURT AT LAW of Walker County, Texas, located on the FIRST FLOOR, COUNTY COURTHOUSE, Huntsville, Texas.

You are advised:

(1) If you do not appear as directed your bond

---

[11] To be ticketed it to be "guilty," by definition. *HLT*

will be forfeited and a warrant issued for your arrest.

(2) Your attorney must also be present.

(3) Witnesses will not be needed at this appearance.

***THIS NOTICE IS IN LIEU OF ALL OTHER NOTICES***

/s/ *Dolores B. Labay*
Dolores B. Labay
Court Coordinator
Walker County Court at Law

Mailed: 09-09-08
Copies: DA
Court File

**2008 Oct 29—SIXTH setting**

CAUSE NO. *07 - 1392*

| | |
|---|---|
| STATE OF TEXAS | IN THE COUNTY COURT AT LAW |
| VS. | OF |
| *Harmon Taylor* | WALKER COUNTY, TEXAS |

## CASE RESET FORM

The undersigned acknowledges this case is reset for:

ARRAIGNMENT ________, 200____ at ______ M.
1ST PRETRIAL ________, 200____ at ______ M.
2ND PRETRIAL ________, 200____ at ______ M.
MOTIONS ________, 200____ at ______ M.
CALL DOCKET *1-7*, 200*9* at *9:00 A* M.
JURY TRIAL *1-26*, 200*8* at *9:00* M. *A*
BENCH TRIAL ________, 200____ at ______ M.

---

### ~~DEFENDANT'S WAIVER OF ARRAIGNMENT~~

*29 Oct*
*2008*

~~Defendant hereby acknowledges that he/she is the same person named in the information, waives formal arraignment in the above entitled and numbered cause and enters a plea of Not Guilty.~~

**DEFENDANT MUST BE PRESENT**

/s/ *Labay*
Court Coordinator

/s/ *Harmon Taylor*
Defendant
*HARMON L. TAYLOR*

______________________
(Print) Attorney for Defendant

Approved ______________
Judge

______________________
(Sign) Attorney for Defendant

**DO NOT LOSE THIS FORM**

______________
Telephone

**THIS COURT WILL NOT REPEAT THIS COURT DATE TO YOU ON THE TELEPHONE.**

*29 October 2008*
Date

## Municipal Court

### 2007 Feb 19—Notice of hearing date

CITY OF HUNTSVILLE
MUNICIPAL COURT
717 FM 2821, WEST
SUITE 200
HUNTSVILLE, TX 77320
(936) 291-5476

February 19, 2007

HARMON LUTHER TAYLOR
7014 MASON DELLS DRIVE
DALLAS, TX 75230

Re: State of Texas VS HARMON LUTHER TAYLOR
Cause/Case No.: 213470 -01
Offense: [12] DRIVERS LICENSE – NO LICENSE

The above referenced case/cause has been set for:

___ Pre-Trial ___ Bench Trial ___ Jury Trial
_✓_ Motion Hearing

___ Preliminary Hearing

on April 5, 2007 at 8:30 AM in the Muncipal [sic] Court, 717 FM 2821, West, Huntsville, Texas.

---

[12] *But see* TEX. PENAL CODE § 2.01. *HLT*

FAILURE TO APPEAR MAY RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST. AN ADDITION [sic] $50.00 FEE WILL BE ADDED TO THE ORIGINAL CHARGE AND $310.00 FOR THE FAILURE TO APPEAR WARRANT. FURTHERMORE, pursuant to Texas Transportation Code, Chapter 706, The Municipal Court may DENY RENEWAL OF YOUR DRIVER'S LICENSE, REMAINING IN EFFECT UNTIL YOU HAVE REACHED A SATISFACTORY DISPOSITION ON THE OUTSTANDING VIOLATION(S).

If you have any questions, please contact the Municipal Court at the number listed above.

For the Court,

Municipal Court [13]
Docket Clerk

_✓_ Certified Mail: *7006 0810 0005 2251 1017*

_✓_ Regular Mail FORM - DEFLTR

---

[13] Original is unsigned. *HLT*

**2007 Apr 5—Judicial entry of plea for Taylor**

JUDGMENT / COURT ORDER
STATE OF TEXAS CITY OF HUNTSVILLE
VS WALKER COUNTY, TEXAS
***Harmon Luther Taylor***
DEFENDANT: ~~TAYLOR, HARMON LUTHER~~
/ CAUSE #: 213470 -01

On April 5, 2007 the Defendant in the above numbered and entitled cause appeared in Municipal Court [14] and entered a plea of

_X_ [15] NOT GUILTY. Case will be set on trial docket. ***(By the court)***

___ NO CONTEST / GUILTY and waived his/her right to a jury trial; and the Court, finds the Defendant GUILTY of the offense of
DRIVERS LICENSE - NO LICENSE
Fine and Court Costs are assessed at $_________.

___ withholds its findings and judgment is suspended for 90 days**.

IT IS ORDERED AND ADJUDGED as follows:
__ Fine & Court Costs be paid on or before _____
__ Fine & Court Costs be paid in full on or before_
__ Defendant must pay $100.00 by _____ and a

---

[14] First indication of forum type or authority. *HLT*

[15] This "X" and GAINES' signature are the only two handwritten items on this one written by the judge. All others are by Taylor. First came the "X;" then Taylor's edits; then GAINES' signature. *HLT*

minimum of $100.00 per month on or before the last business day of each month until paid in full beginning ______. NO EXTENSIONS.

__ Community Service ___ hours (proof of completion) due on or before __________. ( ___ Please check here if in lieu of fine)

__ Alcohol Awareness Course(6 Hrs)must be completed and presented to the court on or before ______ (MUST BE A STATE CERTIFIED PROGRAM)

__ Tobacco Awareness Course(6 Hrs)must be completed and presented to the court on or before_______ (MUST BE A STATE CERTIFIED PROGRAM)

__ Driver's License suspension for _____ days

__ **Deferred Disposition for 90 days. Court Costs in the amount of $65.00 is due immediately. Special expense fees of $_____ due on or before ____. Defendant cannot have any subsequent charges within deferred period.

__ Driver Safety Course(State Certified). Court costs & DSC Admin Fee in the amount of $_____ is due immediately. Failure to make payment will result in a warrant for the maximum fine and court costs.

__ Other/Additional ________________________

__ Reset to (___) ______________ at _____ AM / PM Failure to appear will result in a FTA and warrant ( Court / Def / Atty )

A TWENTY-FIVE [sic] ($25.00) TIME PAYMENT FEE WILL BE ADDED TO ANY PART OF A FINE, COURT COSTS OR RESTITUTION NOT PAID ON OR BEFORE THE 31ST DAY AFTER THE DATE ON WHICH JUDGMENT IS ENTERED, pursuant to Article 51.921 of the Government Code.

IT IS FURTHER ORDERED AND ADJUDGED, that if the Defendant FAILS TO COMPLY with the orders of this judgment a CAPIAS PRO FINE WARRANT WILL BE ISSUED FOR HIS/HER ARREST AT A RATE OF $50 PER DAY IF · ARRESTED AND BE DENIED THE RENEWAL OF YOUR DRIVER'S LICENSE AND ADDITIONAL FEES, REMAINING IN EFFECT UNTIL YOU HAVE REACHED A SATISFACTORY DISPOSITION ON THE OUTSTANDING VIOLATION. NON COMPLIANCE FOR MINOR ALCOHOL VIOLATIONS WILL. RESULTS IN A 6 MONTHS SUSPENSION OF YOUR DRIVERS LICENSE. April 5, 2007

| | |
|---|---|
| ______________________ | /s/ *John Gaines* |
| Defendant Signature | Municipal Court Judge |

***Refused without prejudice 5 April A.D. 2007***
***without the United States***

---

## 2007 Apr 5—Notice of trial setting

CAUSE NO: 213470 -01

| | |
|---|---|
| The State of Texas | In the Municipal Court |
| County of Walker | City of Huntsville |

VS

~~HARMON LUTHER TAYLOR~~ ***Harmon Luther Taylor***

JURY TRIAL

~~KNOWN ALL MEN THESE PRESENTS, THAT I, the above name defendant and as Principal, acknowledge myself to owe and be indebted to the STATE OF TEXAS in the amount of TWO HUNDRED AND NO/100 DOLLARS and in addition thereto: I am bound for the payment of all fees and expenses that may be incurred by peace-officers in rearresting principal in the event the conditions of this bond are violated for the payment of which sum or sums, well and truly to the STATE of TEXAS, I hereby bind myself, my executors and administrators firmly by the presents:~~

I SWEAR ^ ***or Affirm 28 USC 1746(1) without the United States*** that I will appear before said Court, 717 FM 2821 WEST, Huntsville, Texas, on DATE AND TIME: the 17th day of May, 2007 at 8:30 AM [16] o'clock ***Time of 13:30 GMT***
or upon notice by the necessary and reasonable expenses incurred in my arrest for FAILURE TO APPEAR. ALL RESETS MUST BE APPROVED BY THE MUNICIPAL COURT JUDGE.

---

[16] This underline was in the original as it was handed to Taylor. All other handwriting on this form is by Taylor.

I further swear ^ ***or Affirm 28 USC 1746(1) without the United States*** that the information I have provided below is true and correct.
CONDITIONED: That whereas the said PRINCIPAL stands charged by complaint with a CLASS C MISDEMEANOR, To-Wit DRIVERS LICENSE – NO LICENSE in violation of the laws of the ~~State of Texas~~.
***STATE OF TEXAS.***

***Harmon Luther Taylor***
Now, if the said ~~HARMON LUTHER TAYLOR~~ shall well and truly make his/her personal appearance before the Municipal Court of Huntsville, Walker County, Texas at the time and place stated above, and there remain day to day and term, until discharged by due course of the law, then and there to answer said accusation and any and all subsequent proceeding had relative to the charge against him/her, then this obligation shall become null and void, otherwise to remain in full force and effect.

IF YOU ARE REPRESENTED BY AN ATTORNEY, YOU AND YOUR ATTORNEY MUST APPEAR FOR ALL HEARINGS.

Date of Birth _______ Drivers License No./ST ***none***

Current Address ***near 7014 Mason Dells Drive***

Social Security # ***none*** Employer ***none***

Home Phone ***none*** Work Phone ***none***

Name, Address, and Phone # of two people you know:
***UNDER DURESS***
***THREAT OF***
***CONTEMPT***

1. ***declined***

2. ***(see reverse)*** [17]

***without prejudice***
***5 April A.D. 2007*** /s/***Harmon Taylor without the***
Date Defendant Signature
***United States***

---

[17] The Clerk did not provide Taylor a copy of the reverse side, and Taylor declines to reproduce here what he recalls of that page. It's two names, two addresses, and two phone numbers that the municipal court didn't need. *HLT*

**2007 Apr 5—Viva voce**

- Special Appearance, Motion to Dismiss—denied.
- *Sua sponte* mandamus, to name two contact people, issued under ***boisterous***, demonstrative, "**But, fill it out, or you're going to be wearin' an orange suit real soon!!**" , and ***repeated***, **threat of contempt**.
- *Sua sponte* injunction of silence.
- Effective promise of denial of writ of Venire facias ("You're only going to get a panel of six. ... **No, we don't have a Due Process problem, here!**")
- Maybe-I-will-and-maybe-I-won't effective refusal, ***twice***, to memorialize the viva voce orders.

## 2007 May 17—Advisory panel's verdict

JURY TRIAL

STATE OF TEXAS CITY OF HUNTSVILLE
VS WALKER COUNTY, TEXAS
DEFENDANT: ~~TAYLOR, HARMON LUTHER~~
***Harmon Luther Taylor***
CAUSE #: 213470 -01

On this May 17, 2007 ^ ***A.D.*** the Defendant in the above numbered and entitled cause appeared in Municipal Court [18] and ^ ***the court*** entered a plea of not guilty and ~~demanded~~ ^ ***set*** jury trial; and the jury, having heard the evidence and arguments, finds the Defendant:

__ NOT GUILTY of the offense of DRIVERS LICENSE - NO LICENSE
It is therefore Ordered and Adjudged by the court that the Defendant is not guilty of the offense and is discharged.

*X* GUILTY of the offense of DRIVERS LICENSE - NO LICENSE and assessed a fine of $ *100.00*

IT IS THEREFORE ORDERED AND ADJUDGED by the Court that the State of Texas, for the use and benefit of the City of Huntsville, Texas do have and recover from the Defendant the fine in the amount of $ *100.00* and Court Costs in the amount of $ *65.00*

---

[18] First indication of forum type or authority. *HLT*

The Defendant is hereby Ordered to pay the fine and costs:
_X_ On or Before *May 28, 2007*

A twenty-five [sic] ($25.00) time payment fee will be added to any part of a fine, court costs or restitution not paided [sic] on or before the 31st day after the date of this judgment, pursuant to Article 51.921 of the Government Code.

__ Defendant must pay $ _____ by _________ and a minimum of $ _____ per month on or before the last business day of each month until balance is paid in full beginning ________________.
No extensions will be granted.

__ Community Service ____ hours (proof of completion) due on or before ________.
(________ Please check here if in lieu of fine)

__ Alcohol Awareness Course(6 Hrs)must be completed and presented to the court on or before ________. (MUST BE A STATE CERTIFIED COURSE)

__ Tobacco Awareness Course(6 Hrs)must be completed and presented to the court on or before ________. (MUST BE A STATE CERTIFIED COURSE)

__ Driver's License suspension for ______ days

__ Reset to (____) ____________ at _____ AM / PM
Failure to appear will result in a FTA and
warrant ( Court / Def / Atty )

IT IS FURTHER ORDERED AND ADJUDGED, that if the Defendant fails to comply with the orders of this judgment a CAPIAS PRO FINE WARRANT will be issued for your arrest and pursuant to Texas Transportation code, Chapter 706, you will be denied the renewal of your driver's license and additional fees [sic] until you have reached a satisfactory disposition on the outstanding violation.

May 17, 2007

*/s/ J Gaines*
Municipal Court Judge

*X /s/ Harmon Taylor* ***17 May***
Defendant Signature / Date ***AD 2007***
***without prejudice***
***without the United States***

### Rule 14.1(i)(iii)—Rehearing, or other extension

**Possibly. *See* Question 2.**

### Rule 14.1(i)(iv)—Judgment of different date

**Possibly. *See* App. B.**

### Rule 14.1(i)(v)—Statutes and Rules

### Texas Civil Practice and Remedies Code

### Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER.

(a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual

who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351;

(10) grants relief sought by a motion under Section 74.351(l); or

(11) denies a motion to dismiss filed under Section 90.007.

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), or (8) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(d) A district court, county court at law, or county court may issue a written order for interlocutory appeal in a civil action not otherwise appealable under this section if:

(1) the parties agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion;

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation; and

(3) the parties agree to the order.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless the parties agree and the trial court, the court of appeals, or a judge of the court of appeals orders a stay of the proceedings.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1051, Sec. 2, eff. June 18, 2005.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 3.10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 915, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 855, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1296, Sec. 1, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1389, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, Sec. 1.03, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 97, Sec. 5, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1051, Sec. 1, eff. June 18, 2005.
Acts 2005, 79th Leg., Ch. 1051, Sec. 2, eff. June 18, 2005.

### Art. 27.14. Plea of Guilty or Nolo Contendere in Misdemeanor.

(d) If written notice of an offense for which maximum possible punishment is by fine only [or of a violation relating to the manner, time, and place of parking] [element irrelevant] has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, **the written notice serves as a complaint to which the defendant *may*** plead "guilty," "not guilty," or "nolo contendere." ***If*** the defendant pleads "not guilty" to the offense, a complaint shall be filed that conforms to the requirements of Chapter 45 of this code, and that complaint serves as an original complaint. A defendant ***may*** waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense ***if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.***

TEX. CRIM. PROC. CODE ANN. art. 27.14(d) (West Supp. 2006) ("Art. 27.14(d)") (emphasis added). Issue: Is the "ticket" a "complaint?"

### Art. 44.17. Appeal to County Court, How Conducted.

In all appeals to a county court from justice courts and municipal courts other than municipal courts of record, the trial shall be de novo in the trial in the county court, **the same as if the prosecution had been originally commenced in that court**. ...

Art. 44.17 (emphasis added). Issue: Is there any need for a ***third*** arraignment?

### Art. 44.181. Defects in Complaint.

(a) A court conducting a trial de novo based on an appeal from a justice or municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court.

(b) The attorney representing the state may move to amend a defective complaint before the trial de novo begins.

Art. 44.181. Issue: Is it ever possible to waive a "no crime defined" objection?

### Art. 45.018. Complaint [Municipal Court]

(a) For purposes of this chapter, a ***complaint*** is a sworn allegation charging the accused with the commission of an offense.

(b) ***A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding*** in the prosecution of the defendant under the ***complaint***. The defendant may waive the right to notice granted by this subsection.

Art. 45.018 (emphasis added). Issue(s): What has to be served, and when?

## Art. 45.019. Requisites Of Complaint [Municipal Court]

(a) *A* ***complaint*** *is sufficient,* ***without regard to its form***, if it substantially satisfies the following requisites:

(1) it must be in writing;

(2) it must commence "In the name and by the authority of the State of Texas";

(3) it must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;

(4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;

(5) it must state the date the offense was committed as definitely as the affiant is able to provide;

(6) it must bear the signature or mark of the affiant; and

(7) it must conclude with the words "Against the peace and dignity of the State" and, if the offense charged is an offense only under a municipal ordinance, it may also conclude with the words "Contrary to the said ordinance".

(b) ... [justice court]

(c) A complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint is made.

(d) A complaint may be sworn to before any officer authorized to administer oaths.

(e) A complaint in municipal court may be sworn to before:

(1) the municipal judge;

(2) the clerk of the court or a deputy clerk;

(3) the city secretary; or

(4) the city attorney or a deputy city attorney.

(f) If the defendant does not object to ***a defect, error, or irregularity of form or substance*** in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.

Art 45.019 (emphasis added). Issue: Is the "ticket" a "complaint?"

## Art. 45.0215. Plea by Minor and Appearance of Parent

(a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing

conservator to be present during:

(A) the taking of the defendant's plea; ***and***

(B) ***all other proceedings*** relating to the case.

Art. 45.0215 (emphasis added). Issues: Is a motion hearing a "proceeding?" Is the arraignment a "proceeding?" Is the *sua sponte* mandamus "event" a "proceeding?" *See Rothgery*.

**Art. 45.042. Appeal.**

**(a) Appeals from a justice or municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court.**

(b) Unless the appeal is taken from a municipal court of record and the appeal is based on error reflected in the record, the trial shall be de novo. Art. 45.042.

## Texas Rule of Appellate Procedure 49.4

**Accelerated Appeals.** In an accelerated appeal, the appellate court may deny the right to file a motion for rehearing or shorten the time to file such a motion.

TEX. R. APP. P. 49.4 (emphasis in original).

# Threshold Jurisdictional Issues— Municipal Court

## Trial/original jurisdiction

### Sec. 29.002. Creation.

A municipal court is created in each municipality. A reference in state law to a "corporation court" means a "municipal court."

TEX GOV'T CODE ANN. § 29.003 (West 2004).

### Sec. 29.003. Jurisdiction.

(a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction in all ***criminal*** cases that:

(1) arise under:

(A) the ordinances of the municipality; or

(B) a resolution, rule, or order of a joint board operating an airport under Section 22.074, Transportation Code; and

(2) are punishable by a fine not to exceed:

(A) $2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) $500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board.

(b) The municipal court has concurrent jurisdiction with the justice court of a precinct in which the municipality is located in all ***criminal*** cases arising under state law that arise within the municipality's territorial limits or property owned by the municipality located in the municipality's extraterritorial jurisdiction and that:

(1) are punishable only by a fine, as defined in Subsection (c); or

(2) arise under Chapter 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.

(c) In this section, an offense which is punishable by "fine only" is defined as an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment.

(d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court.

(e) The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction.

(f) This section does not affect the powers given exclusively to a joint board operating an airport under Section 22.074(d), Transportation Code.

GOV'T CODE § 29.003 (West 2004).

**Section 1.01. Corporate Name.**

All the inhabitants of the City of Huntsville, in Walker County, Texas, as the boundaries and limits of said City are now established or as hereafter established in the manner provided by this charter, shall be a body politic, incorporated under and to be known by the name and style of the "City of Huntsville," with such powers, rights and duties as are herein provided.

Muni. Code, City of Huntsville, art. I, § 1.01 (May, 2004).

**Section 10.01. Municipal Court.**

There shall be a Department of Justice known as the Municipal Court of the City of Huntsville, which Court shall be deemed always open for the trial of causes, and with such jurisdiction, powers and duties as are given and prescribed by the laws of the State of Texas.

**Section 10.02. Judge of the Municipal Court.**

The Municipal Court shall be presided over by a magistrate who shall be known as the Judge of the Municipal Court. The Council, upon recommendation of the Mayor, shall appoint such Judge, who shall be an attorney at law.

In the event the Judge of the Municipal Court is temporarily unable to act for any reason, a qualified person shall be appointed to act in the Judge's place. The Council shall have the power to appoint on recommendation of the Mayor more than one Judge of the Municipal Court, each of whom shall be a magistrate.

### Section 10.03. Clerk of the Municipal Court.

There may be a Clerk of the Municipal Court who shall be appointed by the City Manager. Such Clerk shall have the power to administer oaths and affidavits, make certificates, affix the seal of the Court thereto, and otherwise perform any and all acts necessary in issuing process of such Court and conducting the business thereof.

There may be such Deputy Clerks of the Municipal Court as may be authorized by the Council and appointed by the City Manager, which Deputy Clerks shall have authority to act for and on behalf of the Clerk of the Municipal Court.

Any Clerk and Deputy Clerk of the Municipal Court shall be responsible to the City Manager and shall be subject to the City Manager's direction and control.

### Section 10.04. Process and Procedure in the Corporation Court.

The style of all writs issued out of the Municipal Court shall be in the name of the City of Huntsville.

All jurors shall be residents of said City and otherwise possess the same qualifications as jurors in the State courts, and they shall be summoned in the same manner as provided for in Justice Court.

### Section 10.05. Court Separate from all Departments.

The Municipal Court of the City shall always be separate and apart from all departments of the City.

Muni. Code, City of Huntsville, art. X, §§ 10.01 to 10.05 (May, 2004).

### Section 2.01.02 Rules of construction.

In the construction of this Code and of all ordinances, the following rules shall be observed, unless the context clearly indicates otherwise:

County. The words "the county" or "this county" shall mean the County of Walker, State of Texas.

Court, corporation court, city court, municipal court. Whenever the words "court," "corporation court," "city court" or "municipal court" are used herein, they shall mean the municipal court of Huntsville, Texas.

Muni. Code, City of Huntsville, § 2.01.02 (May, 2004).

## County Court at Law

### Art. 4.08. Appellate Jurisdiction of County Courts.

The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

TEX. CRIM. PROC. CODE. art. 4.08.

### Section 25.2382. Walker County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Walker County has concurrent jurisdiction with the district court ...

(k) All cases appealed from the justice courts and other courts of inferior jurisdiction in the county shall be made direct to a county court at law, unless otherwise provided by law.

GOV'T CODE § 25.2382(a), (k).

## Rule 14.1(i)(vi)—Additional Materials

### The "Ticket"—2007 Jan 24

### CITATION

Municipal Court No. 213470
717 FM 2821 W. Ste. 200
Huntsville, Texas 77320
(936) 291-5476

| DL/ID,Number | State | Date | Time *AM* |
|---|---|---|---|
| *None* | | *1-24-07* | *4:32* |

| Race | Sex | Date of Birth | Social Security Number |
|---|---|---|---|
| *W* | *M* | *5-12-61* | *None* |

| Last Name | First Name | M.I. |
|---|---|---|
| *Taylor* | *Harmon* | *Luther* |

| Present Address | City | State | Zip |
|---|---|---|---|
| *7014 Mason Dells Drive* | *Dallas* | *TX* | *75230* |

| Permanent Address | City | State | Zip |
|---|---|---|---|
| | | | |

| Home Phone | Work Phone | Other Phone |
|---|---|---|
| *214-361-0401* | | |

| Occupation | School | ID# |
|---|---|---|
| *Lawyer* | | |

| Employer | Employer Address |
|---|---|
| *Self Employed* [19] | |

---

[19] "Sole proprietor" got translated. At a glace, it looked right. *HLT*

## Violations(s)[20] Charged

1, *No Drivers License*

2.

3.

| Direction of Travel | Lane | Location of Violation(s) |
|---|---|---|
| *NB* | | *I H 45 111 MM*[21] |

| Alleged Speed | Speed Limit | Weather |
|---|---|---|
| *76* | *65* | *Rain* |

| Road Condition | Traffic Condition |
|---|---|
| *Wet* | *Med.* |

| Vehicle Description | | | | Registration | |
|---|---|---|---|---|---|
| Year | Make | Model | Color | State | Number |
| *97* | *Dodge* | *Caravan* | *Blue*[22] | *TX* | *BH80SH* |

Nature of Contact: ☒ Traffic Stop
☐ Accident
☐ Other___________

☐ Commercial Vehicle
☐ Hazardous Chemical

Additional Information/Warnings(s)
*Speeding / LP Light*

---

[20] As such in the original.

[21] This is near the huge statue of Sam Houston. *HLT*

[22] In that light, it's tough to distinguish the light green turquoise from a light blue. *HLT*

| Officer | I.D. Number |
|---|---|
| *B. Galle* [23] | *245* |

PROMISE TO APPEAR
THIS IS NOT A PLEA OF GUILTY

I understand that I must appear at the Municipal Court on or before ten calendar days from this date. Failure to appear or to satisfy a judgment ordering payment may result in subsequent, additional charges or renewal of your driver's license being denied. Additional information on BACK

*without prejudice*
X *_/s/ Harmon Taylor_* *_without the_*
*United States*

VIOLATOR'S [24] COPY [⊥ 2 ]

**Juvenile** - If you are under the age of 17, your parent and/or legal guardian will be sent a notice of your court appearance date. Parent and/or legal guardian must appear in court with juvenile defendants.

If you have been charged with an alcohol violation and you are under the age of 21, you **_must_** set a court date to appear before the Municipal Court Judge.

If you have been charged with a tobacco violation and you are under the age of 18, you **_must_** set a court date to appear before the Municipal Court Judge.

---

[23] As mentioned in the motion to dismiss, both of these officers truly are a compliment to their profession. *HLT*

[24] Rather presumptuous position. *HLT*

**Expired violations may** be dismissed with a $10 dismissal fee if proof of compliance is provided to the court on or before ten calendar days of the date of this citation. **Expired registration** will not be dismissed without proof of penalty fee being paid at the time the registration is renewed.

You may be eligible to take defensive driving, request deferred disposition (probation) or payment plan. You can also have your case set for court. Please contact the Court Clerk for more information at (936) 291-5476. Municipal Court office hours are 8:00 to 4:30 Monday - Friday. **You must appear at the Municipal Court office on or before the tenth calendar day of the date of this citation to pay your fine or make other arrangements.**

State law requires the defendants under the age of 25 who are placed on deferred disposition (probation) for a traffic violation must take a driver safety course.

If you have been charged with a traffic violation and have a commercial driver's license, you are not eligible for any type of deferred disposition or driver safety course.

Please contact the Municipal Court Clerk for fine, costs and fee information. Payment can be made in full on line at www.huntsvilletx.gov, by mail or by phone with credit card only. Checks and money orders should be made payable to the City of Huntsville.

**A conviction of an offense under a traffic law of this state or a political subdivision of the state may result in the assessment on your driver's license of a surcharge under the Driver Responsibility Program.**

**A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver's license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two years from the date of conviction. The department may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility.**

## The “Complaint”—2007 Apr 5

CAUSE NUMBER: 213470 -01

STATE OF TEXAS IN THE MUNICIPAL COURT
VS CITY OF HUNTSVILLE
WALKER COUNTY, TEXAS
TAYLOR, HARMON LUTHER

## COMPLAINT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS: [25]

I, the undersigned affiant, do solemnly swear that I have good reason to believe and do believe that HARMON LUTHER TAYLOR , hereinafter called Defendant, on or about the 24th day of January, 2007 , and before the making and filing of this complaint, in the territorial limits of City of Huntsville, in the County of Walker, and the State of Texas, did then and there operate a motor vehicle upon a public street, to-wit:

---

[25] *But cf.* “In the name and by the authority of the State of Texas.” Arts. 1.23, (2.122(a), (c)), (3.02), (7.04), (9.03), (9.04), (11.02), (15.02), (15.07), (16.20(1)), (17.08(1)), (18.01(c)), (18.04(1)), (18.17(a)), 21.02(1), 21.16, 21.21(1), (22.02), (22.10), (23.01), (23.02(1)), (24.20), (26.056 § 2), (35.22), (37.071 § 2(a)(1)), (38.23(a)), (38.41 § 5), (38.42 § 5), (42.11 § 2), (42.17), (42.22 § 1(3)), (43.25), (45.014(b)(1)), **45.019(a)(2)**, (45.0425(a)), (49,20(1)), (59.02(a)), (61.01(7)), and (64.03(d)). *See also* TX Rs. Civ. P. 99(b), 114, 116, 117a, 176.1, 534(b), 592b, 593, 594, 612, 629, 661, 687(a), 699, 816, and 819. *HLT*

IH45 MILE MARKER 111
and the defendant did not have a valid Texas
Driver's License as required by, Texas
Transportation Code Section 521.021
AGAINST THE PEACE AND DIGNITY OF THE
STATE OF TEXAS [26]

/s/ *Celia D. O'Dell*
Affiant [27]

Sworn and subscribed before me a credible person
the 5th day of April, 2007

/s/ *Heather Smallwood [via stamp]*
CLERK, Huntsville Municipal Court
City of Huntsville
Walker County, Texas

GALLE #245 BLAKE

(Seal)
MUNICIPAL COURT
CITY OF HUNTSVILLE TEXAS

---

[26] *But cf.* "Against the peace and dignity of the State." Arts. 1.23, 21.02(8), 21.16, 21.21(8), **45.019(a)(7)**. *HLT*

[27] May the Clerk (Court Administrator) be both a witness and someone who handles the file? Shouldn't there be some screening? Can the **complainant** ***serve*** it, as well? *HLT*

## Bond—2007 May—Notice of Appeal

### Case No. 213470

| | | |
|---|---|---|
| STATE OF TEXAS | § | In The Municipal Court |
| Plaintiff, | § | |
| v. | § | CITY OF HUNTSVILLE, |
| | § | TEXAS |
| Harmon Luther Taylor, | § | |
| Respondent. | § | WALKER COUNTY, |
| | § | TEXAS |

### TAYLOR'S APPEAL BOND

Whereas, on the 17th day of May, A.D. 2007, in the above entitled and numbered cause, in said Municipal Court, a Judgment was rendered and entered against the Respondent, Harmon Luther Taylor, convicting him of the misdemeanor offense of NO DRIVER'S LICENSE upon complaint filed in said court, that STATE OF TEXAS, for the use and benefit of CITY OF HUNTSVILLE, TEXAS, have and recover of the said defendant the sum of **one hundred dollars** (**$** 100) fine and all costs of said prosecution, set at **sixty-five dollars** (**$** 65) from which said Judgment the defendant has appealed to the County Court at Law of Walker County, which sits in Huntsville, Texas;

Now, therefore, we, the said Harmon Luther Taylor, as principal, and as surety, do hereby bind myself, my heirs, executors and administrators, jointly and severally, to STATE OF TEXAS, in the sum of **three hundred thirty dollars** (**$** 330) payable to STATE OF TEXAS, for the use and benefit of the said CITY OF HUNTSVILLE, TEXAS ; and in addition thereto, I am bound for the payment of all necessary and reasonable fees and expenses that may be incurred by any and all sheriffs or other peace officers in arresting the principal in the event the conditions of this bond are violated.

Conditioned, that the said Respondent shall well and truly make his personal appearance before the County Court At Law of Walker County , instanta at Huntsville, Texas , as well as before any court to which the same may be transferred and for any and all subsequent proceedings that may be had relative to said charge in the course of criminal actions based on said charges, and there remain from day to day, and term to term, to answer said cause on trial in said court.

Witness my hand this the __________ day of May ,
A.D. 2007 .

______________________________ ____________________
Respondent/Surety Signature Printed Name.

______________________________
Respondent/Surety Domicile

Examined and approved this __________ day of __________, A.D. 2007.

______________________________
Municipal Court Judge
Huntsville, Walker County, Texas

state of Texas §
county of Dallas§

KNOW ALL MEN BY THESE PRESENTS ss.

Before me, the undersigned authority, personally appeared Harmon Luther Taylor , surety of this bond and upon his or her affirmation, duly administered by me, deposed and said as follows:

I am Harmon Luther Taylor, and I am worth, in my own right, at least the sum of **three hundred thirty dollars** ($ 330), after deducting from my property all that which is exempt by the Constitution and Laws of the state of Texas from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all encumbrances upon my property which are known to me; that my domicile is in the county of Dallas, and that I have property in the state liable to execution worth said amount or more.

______________________________
Affiant

Signed and sworn to before me on this the ______ day of May, A.D. 2007, for which witness my seal and signature.

____________________ (seal)
Notary Public Signature

(If seal is not by stamp, or not legible)

____________________ My Commission Expires:
Notary Public Printed Name

____________________

[N.B. Taylor signed the Bond before the notary on 21 May A.D. 2007.]

## Appendix B—This case from 2009 Jan 26 to Feb 10

### Appellate Court

### 2009 Jan 26—Mandate

MANDATE

THE STATE OF TEXAS

TO THE COUNTY COURT AT LAW OF WALKER, COUNTY GREETING:

Before our Court of Appeals on the 26th day of January A.D. 2009, the cause upon appeal to revise or reverse the judgment between

HARMON LUTHER TAYLOR, Appellant(s)

Trial Court No. 07-1392 and
Court of Appeals No. 10-08-00208-CR

THE STATE OF TEXAS, Appellee(s)

was determined; and therein our said Court of Appeals made its order in these words:

This cause came on to be heard on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that the appeal should be dismissed, it is ordered, adjudged and decreed by the Court that the appeal be dismissed, and that the appellant pay all costs in this behalf expended and that this decision be certified below for observance.

WHEREFORE WE COMMAND YOU to observe the order of our said Court of Appeals in this behalf, and in all things to have it duly recognized, obeyed and executed.

WITNESS the Hon. TOM GRAY, Chief Justice of our said Court of Appeals for the Tenth District of Texas, with the seal thereof annexed, at the City of Waco, the 26th day of January A.D. 2009.

SHARRI ROESSLER, CLERK

BY: **ORIGINAL SIGNED**
Nell Hegefeld, Deputy Clerk

## 2009 Jan 26—Mandate Cover Letter

[Seal of THE STATE OF TEXAS]

**TENTH COURT OF APPEALS**
McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1327
Phone: (254) 757-5200 Fax: (254) 757-2822

**Chief Justice**
*Tom Gray*

**Clerk**
*Sharri Roessler*

**Justices**
*Bill Vance*
*Felipe Reyna*

January 26, 2009

Harmon Luther Taylor
7014 Mason Dells Drive
Dallas, TX 75230

David P. Weeks
Criminal District Attorney
1036 11th St.
Huntsville, TX 77340

**RE:** Court of Appeals Number: 10-08-00208-CR
Trial Court Case Number: 07-1392

**STYLE:** Harmon Luther Taylor
v.
The State of Texas

Pursuant to Rule 18 of the Texas Rules of Appellate Procedure, this Court has this day issued a Mandate in accordance with the judgment and delivered it to the clerk of the trial court. A copy of the mandate is enclosed. The parties are advised that, unless withdrawn, exhibits submitted directly to the Court by a party or the party's attorney of record and now on file with the Court will be destroyed, without further notice, after the expiration of 30 days. *See* TEX. GOV'T CODE ANN. § 51.204.

As ordered by the Court.

***Note: The exhibits referred to in this letter are those that are originally submitted to the Court of Appeals by a party, not those originally filed in the trial court.**

Sharri Roessler, Clerk

/s/ *Nell Hegefeld*

By: Nell Hegefeld, Deputy Clerk

## 2009 Feb 10—Second Motion, Contempt, Denied

[Seal of THE STATE OF TEXAS]

**TENTH COURT OF APPEALS**
McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1327
Phone: (254) 757-5200 Fax: (254) 757-2822

**Chief Justice**
*Tom Gray*

**Justices**
*Bill Vance*
*Felipe Reyna*

**Clerk**
*Sharri Roessler*

February 10, 2009

Harmon Luther Taylor
7014 Mason Dells Drive
Dallas, TX 75230

**RE:** Court of Appeals Number: 10-08-00208-CR
Trial Court Case Number: 07-1392

**STYLE:** Harmon Luther Taylor
v.
The State of Texas

Appellant's Second Motion for Contempt, Alternatively His Motion to Vacate and to Restore Status Quo Ante is dismissed for want of jurisdiction. *See In re Meserve*, No. 10-05-00441-CV, 2006 WL 181384 (Tex. App.—Waco Jan. 25, 2006, orig.

proceeding).[28]

The Court dismissed this interlocutory appeal by opinion and judgment dated September 3, 2008. *See Taylor v. State*, 268 S.W.3d 752 (Tex. App.—Waco 2008, pet. ref'd). Appellant did not file a motion for rehearing, and the Court of Criminal Appeals refused appellant's petition for discretionary review on November 26. Accordingly, the plenary power of the Court to act in this appeal expired on Monday, November 3, 2008. *See* TEX. R. APP. P. 4.1(a), 19.1(a).

Sincerely,

Sharri Roessler, Clerk

*/s/ Nell Hegefeld*
By: Nell Hegefeld, Deputy Clerk

CC: David P. Weeks

---

[28] [N.B. References to *public* access documents is both greatly preferred and necessary. References to "subscription members only" documents are references to *private* law, for which a full copy attached to the document incorporating it would be necessary to facilitate access. *HLT*]

## County Court

### 2009 Feb 2—Notice of Warrant for Arrest

Subject: Cause No. 07-1392
From: Dolores Labay <dlabay@co.walker.tx.us>
Date: Mon, 2 Feb 2009 12:03:59 -0600
To: 'holmes221@earthlink.net'
<holmes221@earthlink.net>

**Mr. Taylor –**

**Judge Hale has signed a Failure to Appear Warrant for your arrest for failing to appear for Jury Trial on January 26, 2009 at 9:00 am.**

**New bond on the above case is $200.00.**

**Thanks,**

***Dolores B. Labay***
Court Administrator
Walker County Court At Law
1100 University Ave., Ste. 102
Huntsville, TX 77340
936-436-4900 ext 4802
dlabay@co.walker.tx.us
wccl@co.walker.tx.us

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# Appendix C—State Law Compendium

## Collateral Order Doctrine by State

### Alabama

*Ex parte Franklin County Department of Human Resources*, 674 So. 2d 1277 (Ala. 1996).
Rejects the C.O.D. (civil).

*See also Ex parte City of Parrish*, 774 So. 2d 534 (Ala. 2000) (dissent would adopt C.O.D., as asserted originally in Franklin County). (civil).

### Alaska

*Alaska Placer Co. v. Lee*, 502 P.2d 128 (Alaska 1972) (construing ALASKA R. CIV. P. 60(b)).
Indirectly recognizes the C.O.D. (civil).

### Arizona

*Eaton v. Unified Sch. Dist. No. 1*, 595 P.2d 169 (Ariz. 1979) (adopting *Eaton v. Unified Sch. Dist. No. 1*, 595 P.2d 183 (Ariz. Ct. App. 1979)) (class action context).
Mentions C.O.D., *Coopers & Lybrand*, but prefers state law analysis. Rejects C.O.D.

*Henke v. Superior Court*, 775 P.2d 1160 (Ariz. Ct. App. 1989).
Rejects C.O.D. in favor of state law. (civil).

*Nalbandian v. Superior Court*, 786 P.2d 977 (Ariz. Ct. App. 1989).
Rejects C.O.D. preferring state appellate procedure. (crim.).

*But see Arizona v. Choate*, 725 P.2d 764 (Ariz. 1986) (recognizes right of appeal of interlocutory double jeopardy issue). (crim.).

**Arkansas**

*Robinson v. Beaumont*, 725 S.W.2d 839 (Ark. 1987) (considers denial of immunity within C.O.D.).
Recognizes C.O.D. (civil)

**California**

California has recognized the C.O.D. in its state system since at least 1885. *In re Marriage of Skelley*, 556 P.2d 297 (Cal. 1976) (citing *Grant v. Superior Court of Los Angeles*, 39 P. 604 (Cal. 1895); *Sharon v. Sharon*, 7 P. 456 (1885)) (civil).

**Colorado**

*City of Lakewood v. Brace*, 919 P.2d 231 (Colo. 1996).
Adopts C.O.D. in the context of appealability of denial of immunity in summary judgment context. (civil).

Adoption confirmed in *Furlong v. Gardner*, 956 P.2d

545, 552 (Colo. 1998), and *Paul v. State*, 105 P.3d 628 (Colo. 2005).

**Connecticut**

*CFM of Connecticut, Inc. v. Chowdhury*, 685 A.2d 1108 (Conn. 1996) (citing *Cheng v. GAF Corp.*, 713 F.2d 886 (2d Cir. 1983).
Indirectly recognizes C.O.D. (civil)

**District of Columbia**

*Kanelos v. District of Columbia*, 346 A.2d 247 (D.C. App. 1975).
Recognizes C.O.D. (civil).

**Deleware**

*Gannett Co., Inc., v. Delaware*, 565 A.2d 895 (Del. 1989) (1st Amendment issue in crim. case context).
Recognizes C.O.D.

**Florida**

Florida has recognized the concept since at least 1923. *Ex parte McDaniel*, 97 So. 317 (Fla. 1923).

*Tucker v. Resha*, 648 So. 2d 1187 (Fla. 1994) (proposes rule change).
Recognizes C.O.D. (civil).

**Georgia**

*Scroggins v. Edmondson*, 297 S.E.2d 469 (Ga. 1982). Recognizes C.O.D. (civil).

**Guam**

Follows S. Ct. rulings, thus recognizes C.O.D.

**Hawaii**

*MDG Supply, Inc. v. Ellis*, 463 P.2d 530 (Haw. 1969). Recognizes C.O.D.

**Idaho**

C.O.D., as such, is not mentioned.

*Johnson v. Fankell*, 520 U.S. 911 (1997). No C.O.D. for denial of immunity defense per summary judgment.

Idaho has allowed a state version of the C.O.D. via its state constitution for certain issues. *Chemung Min. Co. v. Hanley*, 81 P. 619 (1905).

**Illinois**

*People ex rel Mosley v. Carey*, 387 N.E.2d 325 (Ill. 1979).

Rejects C.O.D. (*Abney v. United States*, 431 U.S. 651 (1977) (Double Jeopardy context)) in favor of state statutes.

*In re Estate of French*, 651 N.E.2d 1125 (Ill. 1995). affirmatively and overtly sidesteps the C.O.D. issue.

Appellate jurisdiction defined by state constitution.

**Indiana**

Indiana relies on its state constitution for its state version of the C.O.D.

Indiana has recognized a collateral matter theory since at least 1895. *Voorhees v. The Indianapolis Car and Mfg. Co.*, 39 N.E. 738 (Ind. 1895).

*Bozovichar v. Indiana*, 103 N.E.2d 680 (Ind, 1952). *See also Gulf Oil Corp. v. McManus*, 363 N.E.2d 223 (Ind. App. 1977).

**Iowa**

C.O.D., as such, is not mentioned.

Iowa has recognized appealability of collateral matters since at least 1858. *See Trustees of Iowa College v. The City of Davenport*, 7 Iowa 213 (Iowa 1858) (addressing a merits-based appeal). *See also Mengel v. Mengel*, 138 N.W. 495 (Iowa 1912) (note the number of merits and non-merits issues

addressed on appeal in the case history recited).
C.O.D. concept recognized per state law. (civil).

## Kansas

*In re Application of Berkowitz*, 602 P.2d 99, 103 (Kan. Ct. App. 1979).
Rejects C.O.D. in preference to pre-trial habeas for Double Jeopardy defense. (crim.).

*Skahan v. Powell*, 653 P.2d 1192 (Kan. Ct. App. 1982) (views state statute as the equivalent to § 1291).
Adopts a state version of C.O.D. (civil).
Cited to this same effect in *Flores Rentals, LLC (Tex.) v. Flores*, 153 P.3d 523 (Kan. 2007). (civil).

## Kentucky

C.O.D., as such, is not mentioned.

*NCAA v. Lasege*, 53 S.W.3d 77 (Ky. 2001).
Recognizes a state version of the concept. (civil).

## Louisiana

*Speeg v. Stewart Title Guar. Co.*, 377 So. 2d 589 (La. Ct. App 1979), cert. denied as moot, 383 So. 2d 13 (La. 1980).
Recognizes federal C.O.D. theory as implemented in state statutes.

**Maine**

*Lord v. Murphy*, 561 A.2d 1013 (Me. 1989).
Recognizes C.O.D. (civil).

**Maryland**

*Estep v. Estep*, 404 A.2d 1040 (Md. 1979)
C.O.D. recognized as part of state procedural code. (civil).

*See also Jolley v. Maryland*, 384 A.2d 91 (1978). (crim.).

**Massachusetts**

*Borman v. Borman*, 393 N.E.2d 847 (Mass. 1979) (C.O.D. is analogous to state's "rule of present execution").
C.O.D. recognized as federal statutory construction, i.e., not applicable to states, but analogous to existing state law. (civil).

**Michigan**

C.O.D., as such, is not mentioned.

MICH. COMP. LAWS § 600.308(2)(e) (2008) considers all interlocutory orders appealable but by permission only.

**Minnesota**

*Anderson v. The City Of Hopkins*, 393 N.W.2d 363 (Minn. 1986).
Recognizes C.O.D. despite absence of state statutory authority.

*See also In Re: State and Regents Building Asbestos Cases*, 435 N.W.2d 521, 522 (Minn. 1989) (Popovich, J., dissent) (points out statutory jurisdictional problems created by recognition of C.O.D.).

**Mississippi**

C.O.D., as such, is not mentioned.

MISS. CODE ANN. § 9-4-3 (2008) (jurisdiction).
Interlocutory appeal via MISS. R. APP. P. 5.

**Missouri**

C.O.D., as such, is not mentioned.

*Pulitzer Publ. Col. v. Transit Casualty Co.*, 43 S.W.3d 293 (Mo. 2001).
Rejects concept of C.O.D. via "final judgment" legislation and construction. (civil).

*See also* MO. REV. STAT. § 512.020 (2008) ("Who may appeal").

**Montana**

*In re Litigation Relating to the Riot of September 22, 1991, at the Maximum Security Unit of the Montana State Prison*, 939 P.2d 1013 (Mont. 1997) (immunity context).
C.O.D. is federal construction of federal statute; it doesn't create jurisdiction in state courts.
(civil).

**Nebraska**

*Hallie Mgmt. Co. v. Perry*, 718 N.W.2d 531 (Neb. 2006) (discovery context).
Rejects C.O.D. State statute requires final judgment. (civil).

*Williams v. Baird*, 735 N.W.2d 383 (Neb. 2007) (immunity context).
Adopts C.O.D. for denial of immunity via summary judgment. (civil).

**Nevada**

*State of Nev. Taxicab Auth. v. Greenspun*, 862 P.2d 423 (Nev. 1993) ("Adopting the collateral order doctrine would require this court to extensively screen [sic.] appeals from interlocutory orders to determine whether this court has jurisdiction. Jurisdiction lines would become unfocused and uncertain. This in turn could result in a proliferation of premature appeals. These burdens would outweigh **any possible benefits** that could result from adoption of the collateral order doctrine." (emphasis added)).

Translation: "Our trial bench constitutes some the state's highest-stake gamblers. To add to their gambling rush, we provide no support whatsoever, for we relish in the notion of hanging all of them out to dry by providing no preventative remedy when they try to exercise jurisdiction they don't have."

Soundly rejects C.O.D.

**New Hampshire**

*Richardson v. Chevrefils*, 552 A.2d 89 (N.H. 1988). Adopts C.O.D. in part due to attribution of federal law as basis for immunity defense theory. (civil).

**New Jersey**

*New Jersey v. Nemes*, __ A.2d __ (N.J. Super. Ct. App. Div., Oct. 30, 2008) (Double Jeopardy context) Declines to recognize C.O.D. using a state procedural rule to determine appellate court jurisdiction. (crim.).

**New Mexico**

*Carrillo v. Rostro*, 845 P.2d 130 (N.M. 1992) Adopts C.O.D. Looks to state jurisdictional statute.

**New York**

C.O.D., as such, is not mentioned.

*Buffalo Elec. Co., Inc. v. New York*, 201 N.E.2d 869 (N.Y. 1964) (construing N.Y. CONST. art. VI, § 3(b)(1) and N.Y. CIV. PRAC. L. & R. § 5601(d) (Consol. 2008), expanding jurisdiction to alleviate barriers associated with "interlocutory"). *See also* § 5011.

*In re Abrams*, 465 N.E.2d 1 (N.Y. 1984) (dissent makes clear that majority opinion distinguishes civil and criminal). [Refreshing distinction!].

*In re Estate of Gilbert*, 10 N.E. 148 (N.Y. 1887). Recognizes civil procedure "code" as jurisdictional basis for interlocutory appeal affecting substantial rights.

*New York v. The Am. Loan & Trust Co.*, 44 N.E. 949 (N.Y. 1896) (discussion of finality relative to high court).

*Geller v. Flamount Realty Corp.*, 183 N.E. 520 (N.Y. 1932) (contempt; finality, thus jurisdiction, depends upon being a party or not).

*New York ex rel. Robertson v. New York State Div. of Parole*, 492 N.E.2d 762 (N.Y. 1986) (habeas context; transfer is "final," thus appealable; denial of application for subpoenas is "not final").

**North Carolina**

*Goldston v. American Motors Corp.*, 392 S.E.2d 735 (N.C. 1990).
C.O.D. doesn't establish jurisdiction in state courts. N.C. prefers its *Wachovia* two-prong test. *Wachovia Realty Invs. v. Housing, Inc.*, 232 S.E.2d 667 (N.C. 1977).

**North Dakota**

*Rogelstad v. Farmers Union Grain Terminal Assn, Inc.*, 224 N.W.2d 544 (N.D. 1974).
C.O.D. doesn't address "finality" standard in state courts.

**Northern Mariana Islands**

*Northern Mariana Islands v. Hasinto*, 1 N. Mar. I. 377 (1990) (statute without term "final" construed to mean "final").
C.O.D. mentioned in n.6. (crim).

*Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N. Mar. I. 79 (1992) (sanctions issue).
Recognizes C.O.D. in n.2. (civil).

**Ohio**

*Celebrezze v. Netzley*, 554 N.E.2d 1292 (Ohio 1990) (construing OHIO REV. CODE ANN. § 2505.02 (Matt.

Bender 2008)).
C.O.D. construes federal jurisdictional statute; it's not applicable to the states.

**Oklahoma**

*McLin v. Trimble*, 795 P.2d 1035 (Okla. 1990) (Okla. law recognizes orig. proceeding to challenge denial of immunity defense).
Rejects C.O.D. in preference to state law.

*In re Estate of Nation*, 834 P.2d 442 (Okla. 1992).
Dissent applies C.O.D.

*Lambert v. Town of Straingtown*, 834 P.2d 955 (Okla. 1992).
Dissent applies C.O.D.

**Oregon**

C.O.D., as such, is not mentioned.

Appellate jurisdiction, criminal cases: OR. REV. STAT. §§ 138.040, 138.053 (2007).
Appellate jurisdiction, civil cases: OR. REV. STAT. § 19.205 (2007) (formerly § 19.010), § 19.225 (2007) (class action).

**Pennsylvania**

*Pennsylvania v. Barber*, 337 A.2d 855 (Pa. 1975 (Apr.

3)) (motion to quash homicide indictment denied). Dissent applies C.O.D. to conclude that the court should have reached the merits of the appeal. (crim.).

*Bell v. Beneficial Consumer Disc. Co.*, 348 A.2d 734 (Pa. 1975 (Nov. 26)) (class action issue).
Recognizes C.O.D. via *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949). (civil).

*Pennsylvania v. Ritchie*, 480 U.S. 39 (1987).

## Puerto Rico

Informe la búsqueda para "la doctrina de orden incidental" no produjo ningunos documentos.

## Rhode Island

*In re Joseph T.*, 575 A.2d 985 (R.I. 1990) (interlocutory appeals are limited to well-defined exceptions to "final judgment" rule).
Rejects C.O.D.

## South Carolina

*Ex Parte Capital U-Drive-It, Inc.*, 630 S.E.2d 464 (S.C. 2006) (addressing S.C. CODE ANN. § 14-3-330(1) (2007), declining to construe § 14-3-330(2)).
Finds C.O.D. reasoning sound but rules under state statute.

**South Dakota**

C.O.D., as such, is not mentioned.

S.D. CODIFIED LAWS § 15-26A-3 (2009) (listing issues that are appealable to S.D. S. Ct.).

**Tennessee**

*Fann v. Brailey*, 841 S.W.2d 833 (Tenn. Ct. App. 1992) (§ 1983 case, immunity issue).
Applies C.O.D. (civil).

**Texas**

*The Permian Corporation v. Davis*, 610 S.W.2d 236 (Tex. Civ. App.—El Paso 1980, *writ ref'd*).
Rejects C.O.D. (civil).

*Ex parte Robinson*, 641 S.W.2d 552 (Tex. Crim. App. 1982).
Rejects C.O.D. in preference to pre-trial habeas. (crim.).

**Utah**

*Tyler v. Dept. of Human Services*, 874 P.2d 119 (Utah 1994) (addressing avenues of appeal).
Mentions C.O.D.

*Mecham v. Frazier*, 193 P.3d 630 (Utah 2008).
Rejects C.O.D.

## Vermont

*Vermont v. Lafayette*, 532 A.2d 560 (Vt. 1987) (juvenile case, transfer issue).
Recognizes C.O.D.

## Virgin Islands

4 V.I.C. § 33 (2008) (scope of civil and criminal appeals established).

*Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311 (V.I. S. Ct. 2007).
Recognizes C.O.D. (civil).

## Virginia

*West v. Virginia*, 455 S.E.2d 1 (Va. 1995) (interlocutory appeal dismissed).
Rejects C.O.D. (crim.).

## Washington

*City of Hoquiam v. Pub. Employment Relations Comm'n*, 628 P.2d 1314 (Wash. Ct. App. 1981), *rev'd* on the merits, 646 P.2d 129 (Wash. 1982) (attorney disqualification context.

Appellate court recognized C.O.D.; state high court reversed on the merits, subtly confirming recognition of C.O.D.

**West Virginia**

*Lloyd v. Kyle*, 26 W. Va. 534 (W. Va. 1885) (standard: practical construction of "final").

*Durm v. Heck's, Inc.*, 401 S.E.2d 908 (W. Va. 1991).
Discusses C.O.D., n.2, in context of exceptions to "final order rule."

*Gooch v. W. Va. Dept. of Public Safety*, 465 S.E.2d 628 (W. Va. 1995).
Formal recognition of C.O.D.

**Wisconsin**

*Wisconsin v. Jenich*, 292 N.W.2d 348 (Wis. 1980) (Double Jeopardy context).
Dissent discusses C.O.D. but prefers state statutes, suggesting activation of the high court's superintending and administrative authority, looking to WIS. CONST. art. VII, § 3(1). *See* n.8. (crim).

*Arneson v. Jezwinski*, 556 N.W.2d 721 (Wis. 1996) (qualified immunity context).
Discusses C.O.D. and activates high court's superintending and administrative authority, ordering immediate review of timely appealed denial of immunity defense summary judgment made on

basis of law (as distinguished from judgment based on issue of fact).

### Wyoming

*Carlson v. Langdon*, 751 P.2d 344 (Wy. 1988) (review by certiorari, attorney disqualification issue). C.O.D. discussed favorably.

# Appendix D—Municipal Court 2007 Apr 5

## Regarding the non-existence of municipal court orders

### Standard, routine objections taken personally?

Routine proceedings turned rather nasty rather early. Taylor opened the 5 April hearing by requesting judicial notice of the Record or the opportunity to call the Clerk to the stand. The judge opened the file and asked of what he should take particular Notice. Taylor said, "What's not there."

### Traditional, typical absences in municipal court Records.

Taylor's motion contains his objections, but, as of the hearing, these ideas seemed to be first impression. (*But cf. Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008) (the arraignment ***is*** a "proceeding")). As of the hearing date and time, the Record contained (1) no "complaint" and (2) no proof of any service of any "complaint," at *any* time, much less in compliance with Art. 45.018(b).

On the left was the "ticket;" on the right, Taylor's motion and the hearing Notice. STATE filed no response.

### The first proceeding was the motion hearing.

The docket was called at 8:30 a.m., and the hearing was conducted at the bench starting in earnest right at 8:45 a.m. (CDT). If someone in the gallery, at least 25' away, listened closely, he could likely make out the conversation. The ruling, **Denied**, about 8:50 a.m., was a proclamation to all in the gallery.

**The second proceeding was the "arraignment."**

Immediately afterwards, the court started an "arraignment."

GAINES: You're being charged with .... [29] How do you plea?

Taylor: I'm not pleading. There's nothing to which to plea. [30]

GAINES: Well, I'll set you a trial date, and I'll enter a plea of Not Guilty for you.

Taylor: Can you provide a Venire to be drawn from the vicinage that can be instructed to determine the law as well as the facts?

GAINES: I would empanel a jury.

Taylor: If I put myself on the country and demand a writ of Venire ...

GAINES: Venire?

Taylor: Twelve people from the vicinage ...

GAINES: You're only going to get a panel of six.

Taylor: Then we have another Due Process problem, don't we?

GAINES: **No, we don't have a Due Process problem, here! We're going to have a trial. Only I'm going to summon a panel, and we're going to have us a jury, and we're going to pick six of 'um, and they're going to decide whether you're guilty or not guilty.**

GAINES assured Taylor that Taylor would be getting a "complaint" shortly. Thus, as of 8:51 a.m., the Record still contained (1) no "complaint" and (2) no proof of service of any "complaint," at *any* time, much less at least one day before "any proceeding." *See* Art. 45.018(b).

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[29] Conspicuously, the court gave no Notice of any "arraignment" proceeding. But, travel time alone is a six-hour round trip. As it turns out, something even more valuable than Time may be preserved, here.

[30] "All pleading of the defendant in justice or municipal court may be oral or in writing as the court may direct." Art. 45.021.

### The third proceeding included both mandamus and injunctive orders issued *sua sponte*.

The court handled some other cases while additional paperwork was being handled. By about 8:59 a.m., a party named Ortega had not appeared. The judge told those there for that case that a *capias* would be issued and that Ortega would be arrested for not appearing.

The Clerk wanted some information filled in on the "JURY TRIAL" form. During this time, Taylor read it, modified it, dated it, and signed it, with his typical reference to choice of law. The Clerk, unsatisfied, turned the form over to the judge, who became visibly agitated.

(At 9:05 a.m., the following exchange occurred.)

GAINES: We need you to give us the names of two people so that in the event you don't show up, I can send someone to find you and bring you to court.

Taylor: You have my verified statement that I'll be here.

(Then came the mandamus "display.")

GAINES: We need witnesses for this. **Mr. Bailiff, Madame Prosecutor.** (motioning, hands raised, traditional hand signal for gathering). Make sure that we understand that I'm giving him Notice right now in open court that if you don't comply with my direct order ... [pause]

Taylor: I'm still getting my witness. (Taylor also motioned to his witness, which required turning his head and upper body toward the gallery, thus away from the bench.)

GAINES: I'm giving you Notice to let you know that when I call this, to let you know, and he doesn't show up, Turn Around! Understand, I want to be clear, ...

(Taylor looked back toward the bench, where the judge was still gathering his witnesses. So, Taylor again looked toward the gallery and motioned for his witness also to join the group at the bench, so that Taylor, too, could have a witness to whatever this glorious event was going to be.)

Taylor: My father needs to hear this.

GAINES: I'm, ... You can call ... **you stay ... TURN AROUND, *SIR!*** (GAINES was about to leap over the bench. If he had, he would have left his skin in his chair. Apparently, the judge could gather *his* witnesses, but *Taylor* couldn't gather his.)

GAINES: **If you don't comply, I'm being very, you know, accommodating with you, but if you don't comply and do this, this bailiff, here, he is going to take you into custody, and you're going to spend some days with us in the jail, and you won't be able to get out until I let you out. Do you understand?** [pause] **I'm giving you notice right now. That is a direct, you're going to be held in contempt, direct contempt, if you do not follow my orders. So put this down. If you'll comply with this, it's going to be real simple. You know, this gentleman right here, you know what, you can put him down as you are here. But, fill it out, or you're going to be wearin' an orange suit real soon. I'm not going to be havin' any of this non-sense. You understand me?!**

(The judge, document in hand, thrust the document across the bench in Taylor's general direction.)

(9:06 a.m.)

Taylor: (after taking the document) What's your Social Security Number, please?

GAINES: (Stunned) **You're not entitled to my Social Security Number, *Sir!*** (leaning forward). **Fill out the form, as I've directed, or you won't be leaving this courtroom by the front door.**

Taylor starts rereading the document. [time passes]

(9:07 a.m.)

Taylor: We're going to 'round and 'round on this, aren't we?

GAINES: **We're not going to go 'round on this, because I'll tell you how ... You'll get everything you need ... If you'll follow all the directions this will be very easy. But, in this court, I'm the rule-writer.**

Taylor: If you had the authority.

GAINES: **I have authority**.

Taylor: You have no jurisdiction.

GAINES: **Yes, I do.**

Taylor: Then we're going to go 'round and 'round.

GAINES: **No, we're not. And, I'm going to warn you at this time, you'd best be ... keep your comments to yourself from this time forward or as I've indicated, I'll hold you in direct contempt.**

Taylor: What are you calling comments?

(9:08 a.m.)

GAINES: **Right there. I order you to keep silent.** (leans back) [considerable direct eye contact]

… **Are you finished with the form?"**

As seen on the Ex. D-406, Taylor noted the duress.

(9:08:30 a.m.)

**Are you finished with the form?**

(9:09:10 a.m.)

**Have you finished the form?**

Taylor: Just making real sure you have all this information (turning the page from front to back several times; two names; two addresses; two numbers; the invasion of privacy, under ***vociferous*** threat of contempt for not being invaded, was complete).

(Handing the form, with the information on the reverse side, back across the bench, Taylor inquired about getting draft orders to the court for signature.)

GAINES: You can send 'um, but I'll decide whether I want to sign 'um. (Other brief conversation.)

(9:10 a.m.)

GAINES: In a perverse sort of way, I'm looking forward to this trial.

(Other conversation; new prosecutor to be coming in.)

(9:12 a.m.)

GAINES: Well, the thing is, it didn't happen. (Referring, of course, to the non-existence of any contempt order.)

Taylor: It DID happen! (Referring to the mandamus and threats of contempt.) And, I need for you to enter written orders.

GAINES: What orders?

Taylor: All the orders you've issued this morning!

Contempt. Mandamus. Silence.

GAINES: (After a reflective pause) Well, you can send draft orders, but I may or may not ever sign 'um.

(Closing conversation focused on the trial date: 17 May.)

(9:13 a.m.)

Clerk gave copies of documents to Taylor. This was the first time Taylor had seen any "complaint" relevant to this matter. It's dated but has no timestamp.

## Epilog

2008 Oct. 29. Taylor and Gaines had a pleasant greeting and brief conversation. It was brief because Gaines had several clients in attendance for that morning's Docket Call.